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Additional Extracts from Transcript of Record.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, PLAINTIFF IN ERROR,

vs.

MARY BALL CHAPPELL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

RECORD FILED MARCH 28, 1896.

(16,240.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 30, 1897.

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STATE OF MARYLAND, *Baltimore County.*

In the Circuit Court for Baltimore County.

THOMAS C. CHAPPELL *vs.* MARY BALL CHAPPELL. } In Equity.

On March 13, 1895, the plaintiff, *in propria persona*, filed the following bill of complaint:

Bill of Complaint.

In the Circuit Court for Baltimore County.

THOMAS C. CHAPPELL *vs.* MARY BALL CHAPPELL. } In Equity.

To the honorable judge of said court:

The bill of complaint of Thomas C. Chappell against Mary Ball Chappell, respectfully shows:

1. That the complainant is a resident of Baltimore county, and has resided there for more than two years.

2. That the defendant is residing in the city of Boston, State of Massachusetts, and has resided there since the 25th day of September, 1893.

3. That the complainant made the acquaintance of the defendant while traveling in the State of Florida, in the year 1874; subsequently corresponded with her, and visited her at the residence of her father, in the city of Portsmouth, State of New Hampshire, in the year 1876.

4. That subsequently, on the 6th of June, 1878, the complainant married; and on the 21st day of June, 1878, the defendant married one Alfred Larkin, a citizen of Portsmouth, New Hampshire; and on or about the 24th day of June, 1878, three or four days subsequent to said marriage of the defendant and said Larkin, the complainant and defendant met on 5th avenue, in the city of New York, and the complainant has been informed by the defendant that when she saw him she felt she could only be happy with him.

5. That he has been informed by the defendant that on the evening of that day the defendant and said Larkin, three or four days after their marriage, got into a quarrel at the Hotel Buckingham, in the city of New York, where they were stopping, which continued, to a greater or less degree, until the year 1886, when the defendant entered divorce proceedings against said Larkin, and obtained a decree in her favor in the year 1887, on the ground of cruelty and drunken-ess.

6. That he is informed and believes that during the period the defendant was married to said Larkin, she so greatly exasperated him by her acts and conduct that he treated her with great brutality and violence, and during the autumn of 1881, drew a revolver on her and attempted to shoot her in the Hotel Brunswick, city of New York, and she was obliged to lock herself in the bath-room and ring for the servants, and send a messenger for one of Larkin's friends; and at the time the defendant left the said Larkin finally, he made another attack on her and tried to kill her, and she was obliged to lock herself in her room and call out the window for a neighbor, who assisted her to escape to her father's house, at 12 o'clock at night.

7. That he has been informed by the defendant, that about the time she finally left said Larkin she heard that said Larkin had made advances to one of the servant maids and offered her a sum of money to meet him in Boston, and the complainant believes now that this occurrence affected the defendant's mind, as she has constantly accused the complainant of things which he had never done and had never thought of doing.

8. That on the 5th day of May, 1891, a marriage ceremony was performed in the city of Boston, State of Massachusetts, at seven o'clock in the evening, between the complainant (his wife having previously departed this life) and the divorced defendant; and that prior to said ceremony the complainant and defendant freely and fairly executed, acknowledged and delivered a valid deed of release and contract, which is duly recorded among the land records of Baltimore county, in Liber I. W. S., No. 187, folio 171, &c., September 12th, 1891, a copy of which is hereto annexed, marked "Complainant's Exhibit A."

9. That previous to said ceremony the complainant had seen very little of the defendant since the year 1876; had never been with her to a public gathering or anywhere in public; and his views and opinions regarding her were founded almost entirely on their previous acquaintance in 1876, and her correspondence, and he regarded the defendant in the light of an injured woman.

10. That the complainant believes and charges that at the time said ceremony was performed the defendant was insane (said insanity being unknown to the complainant), and has not since attained lucidity and cohabited with the complainant, and said defendant was incompetent to make a valid marriage, and, according to the laws of Massachusetts, P. S. 145, sec. 5, said marriage is void *ab initio*.

11. That the defendant has been guilty of cruelty of treatment, excessively vicious conduct, and abandonment and desertion of the complainant; that the complainant sets forth the following occasions and instances of the acts and conduct of the defendant, upon which, with other acts and conduct which he will prove if required, he bases his charges of insanity, cruelty of treatment, excessively vicious conduct, and abandonment and desertion, to wit:

1. In the carriage, while driving to the Hotel Vendome, after

the ceremony, the defendant expressed herself quite strangely, and acted in a most peculiar manner after arriving at said hotel.

2. On the several days following the conduct of the defendant altered entirely, and she was so meek that the complainant was at a loss to understand it.

3. On the following Saturday and Sunday the defendant behaved in a most peculiar way at Lakewood, refused to walk with the complainant, and preferred taking a nap after dinner to taking a walk with the complainant, and then subsequently complained because he had not implored her to take a walk with him, and because he had taken a walk alone.

4. On the following Tuesday the complainant and defendant sailed on the steamship Havel, the newest steamer of the North German Lloyd line, and the complainant provided for the defendant and himself the most comfortable state-room on the steamer, the only deck-room on the ship.

5. At luncheon and dinner the defendant again behaved in a peculiar way, and on the following day preferred to remain in the state-room and said the water frightened her, and although frequently requested to walk on deck by the complainant, and to accompany him to the table for her meals, she preferred to remain in her room. Several weeks afterwards she informed the complainant that she had remained in her room because a man traveling with the Earl of Dycet had looked at her rudely while the complainant was asleep in a steamer chair after dinner on the first day of the voyage.

6. When the vessel arrived at Southampton the defendant came forth from her state-room and again behaved in a remarkable manner, refusing to notice or have anything to do with any person on the vessel.

7. The complainant and defendant reached London on May 19th and went to the Hotel Savoy, and he is informed and believes she, at this time, wrote letters to her family saying she had never been so happy in her life before, and on the 28th day of the same month the complainant and defendant went to the Derby on a coach, and did not get back to the hotel until about 10 o'clock at night; on the following day at dinner the defendant complained of feeling unwell, but after dinner went with the complainant to the Comedy Theatre to witness a performance called Husband and Wife.

8. At this time the defendant began to lament having gotten into a delicate condition so soon after the marriage ceremony, and said it was absurd, disgusting and indecent for a woman of her age to get into this condition so soon after marriage.

9. On the following evening, Saturday, May 30th, the defendant said she was too ill to go to the theatre, and went to bed, suffering very much from sickness in the nature of *mal de mer*, and the complainant sat up with her the entire night nursing her, and on the following day the defendant grew worse, and the complainant directed the hotel authorities to summon a physician, and a physician answered the summons and prescribed for the defendant, and continued to visit the defendant and prescribe for her for the several

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9. On the following evening, Saturday, May 30th, the defendant said she was too ill to go to the theatre, and went to bed, suffering very much from sickness in the nature of *mal de mer*, and the complainant sat up with her the entire night nursing her, and on the following day the defendant grew worse, and the complainant directed the hotel authorities to summon a physician, and a physician answered the summons and prescribed for the defendant, and continued to visit the defendant and prescribe for her for the several

days following, but the defendant grew worse and worse, and the complainant became greatly exhausted with nursing the defendant both night and day, and became very much alarmed at her condition, and telegraphed for Julia Ball, the sister of the defendant, who was at Carlsbad, in Germany, who thereupon came to London.

10. The complainant at this time discovered that the physician who had answered the summons, and who had been attending the defendant for several days, and under whose care she was getting worse and worse, was not the regular hotel physician, but one of his assistants, and the complainant thereupon wrote a letter insisting on the regular physician attending the defendant, and not his assistant, and sent it to said physician.

11. The regular physician then appeared and said the defendant had the influenza, and ordered a trained nurse, but the influenza was an epidemic in London at the time, and many of the nurses were affected, as well as the others, and nearly all nurses not affected were engaged nursing persons ill with this disease; finally, after visiting nearly every hospital and nursing institution in London the complainant succeeded in securing a trained nurse for the defendant.

12. The defendant's mind became very much affected at this time, and she became greatly enraged with the complainant without any cause or pretext whatever, went into hysterics, and told the physician and nurse she was insane when she married the complainant.

13. On the first of July the complainant paid the wages of the nurse then due, about $40.00, and received a receipt for the same, which reads as follows:

"50 WEYMOUTH STREET, W., *July 1st*, 1891.

Received from Mr. T. C. Chappell the sum of eight pounds, eight shillings and — pence, for four weeks nurse's services.

MARY POLLOCK."

14. Subsequently the defendant complained very much because she could see from the window of her room a sign at some distance of one of London's undertaker establishments, and said it had a very depressing effect upon her, and insisted on having other apartments for herself and the nurse.

15. The complainant then provided the defendant with a suite in the front of the hotel at a cost of over $12.00 a day, for the apartments alone, at some distance from the room occupied by him, which cost about $3.00 a day, and provided her with fruit at most extravagant prices, hot-house grapes, $1.75 a pound; peaches, $.50 apiece; berries, $1.25 a basket, and various other delicacies; did all in his power for the comfort of the defendant; was most kind and considerate to her, and was deeply grieved at her mental condition.

16. The defendant appeared to the complainant at this time to have sufficiently recovered to take a continental trip, and he urged her to go with him to the continent, but she refused to go. The nurse then suggested to the complainant there was not any neces-

sity for the physician to continue to call, and advised the complainant to tell him to stop, but the complainant did not act upon the nurse's suggestion at the time, thinking the physician would stop calling of his own accord, and expecting each visit to be his last.

17. On the 9th of July the royal procession, given in honor of the Emperor of Germany, passed the Hotel Savoy. The complainant went to Guild hall to witness the arrival of the royal party there, and returning to the hotel about one o'clock, in time to witness the arrival of the procession at this point, was very much astonished to find the defendant in bed, instead of witnessing the advancing procession, and upon inquiring the cause, was informed that the physician had been examining her with instruments. The defendant continued to be quite ill for several days thereafter, but on the 16th of July appeared to the complainant sufficiently recovered to dispense with the services of the physician, and the complainant thereupon, without mentioning the fact to the defendant, concluded to adopt the suggestion to stop the physician's calls, and wrote to the physician, telling him he thought the defendant was sufficiently recovered to dispense with medical services, after one more visit, which he suggested to the physician to make on the 21st of July.

18. On the morning of July 21st, before the arrival of the physician, the nurse sent for him in great haste, without the knowledge of the complainant, and upon his arrival, the said physician met the complainant and said he had been surprised at receiving his letter, because "he, the physician, knowing what had been done, knew the defendant must be worse before she would entirely recover," and made some remarks to the nurse which the complainant overheard, and which aroused the suspicions of the complainant, and subsequently he discovered that the said physician, to satisfy the whims of the defendant, had performed an illegal operation on her with instruments.

19. The complainant thereupon became highly indignant, and went to the house of the physician, but did not find him there, and left a letter dismissing him. He then went to the Treasury Department, to the office of the public prosecutor, for the purpose of having said physician legally prosecuted by the authorities for performing the said operation on an insane woman, the said defendant, but was informed at the office of the public prosecutor that the proceedings should be begun at Scotland Yard.

20. Not wishing to bring the case before a police court, the complainant returned to the hotel intending to consult an English lawyer, when, just as he was entering the room he occupied at said hotel, at some distance from the suite occupied by the defendant and nurse, he saw the said physician coming down the hall, from the said suite of apartments, carrying in his hand a case which looked like an instrument case. The physician and the complainant entered the room together, and the complainant then indignantly charged the physician with the said illegal operation, whereupon the physician called the complainant a liar, whereupon the com-

plainant promptly and justifiably struck the said physician. The said physician then ran out of the complainant's room to the apartments of the defendant, summoning the nurse as a witness to the assault, and returned to the door of the complainant's room, having previously rung the elevator bell, and summoned the man in charge thereof as an additional witness. He then challenged the complainant to strike him before witnesses, and again applied the epithet "liar" to the complainant, whereupon the complainant again struck said physician, who thereupon took the elevator and descended to the office of the hotel and complained to the manager.

21. The complainant thereupon went to the apartments occupied by the defendant and expressed great indignation at the nurse for having been a party to this illegal operation, and the complainant informed the defendant that he did not intend to become an accessory after the fact to the said illegal operation in any way, and the defendant thereupon, with all the cunning of the insane, without the knowledge or consent of the complainant, procured the nurse to send a telegram to the defendant's brother in America, wherein she instructed her said brother to remit to her about $800.00 of her statutory personalty, which she had as cash in bank, and which he thereupon remitted, and the complainant is informed and believes the defendant procured the nurse to go to the bankers and draw the money, and thereupon paid said physician without the knowledge and against the will of the complainant, and also made the nurse a present of a large sum of money.

22. The complainant struck the physician on Monday, July 27th, and being exhausted by excitement and the great mental strain and suffering and distress caused by the insane acts and conduct of the defendant, and the trickery of the physician and nurse, who had taken advantage of the defendant's weak mental condition to gratify her insane whims and perform the aforesaid illegal operation, and filled with indignation and disgust, the complainant, on the following Thursday, went to Ostend to recuperate his health, but before doing so, paid his hotel bills and deposited with the cashier of the hotel twenty-five pounds sterling, equal to about $125.00, subject to the order of the defendant, and took from the said cashier a receipt which reads as follows:

"HOTEL SAVOY AND RESTAURANT, LONDON.

Received, July 30th, 1891, of Thos. C. Chappell, twenty-five pounds, subject to the order of Mrs. Thos. C. Chappell.

L. CATELLO."

23. Several days after the complainant's departure, the defendant packed her trunks, sent for her bill, and endeavored to have the money deposited as aforesaid applied to the payment thereof, and to draw the balance, with a view of leaving the hotel, but the cashier refused to give her the money, for some reason unknown to the complainant, and she then paid the bill herself, amounting to about $40.00, and went to a boarding-house, where her sister had obtained rooms for her, refusing to inform the complainant of her address,

or to give him any address except that of Brown, Shipley & Co., the complainant's bankers, and also refused to join the complainant in Ostend, notwithstanding the fact that he offered to recross the Channel and meet her at Folkestone, in England.

24. Before leaving London the complainant had engaged passage for America on the steamship City of New York, sailing from Liverpool, August 19th, and had so informed the defendant, and about three days before the steamer sailed she informed, by letter, the complainant, who was still at Ostend, that she and her sister were at a boarding-house on Weymouth street, and that they intended to take the noon train for Liverpool on August 18th.

25. The complainant advised her that he had matters to attend to in London in the way of paying bills, &c., and that he could not take such an early train, and that he would leave Ostend on August 17th and call for her on the afternoon of the 18th, and take her to Liverpool with him by the Great Northwestern railroad, and subsequently the complainant did call for her at the said boarding-house where she had been stopping, and was informed that the defendant had departed by the noon train for Liverpool, by the Midland railway.

26. The complainant reached Liverpool the following day, a few hours before the time for the steamer to sail, and went to the Adelphi hotel, where the defendant was stopping, and, having previously visited the steamship office with a view of finding out what time the tenders left for the steamer, and having been fully informed on this subject, stated to the defendant that there were two tenders, one about two o'clock and one about three-thirty, and that he would take her to the ship with him on the tender leaving at three-thirty, whereupon the defendant insisted that the three-thirty tender was only for baggage, and said she was going to the ship by the two o'clock tender, and when the complainant subsequently endeavored to find her to take her to the three-thirty tender with him, he discovered that she had persisted in her determination and had gone by the first tender, and when he reached the steamer he found the defendant safely there, but she immediately insisted on going to her state-room and remaining there, and said she was not coming out of it until the ship reached New York, which she did.

27. The complainant paid the doctor on the steamer five pounds sterling, equal to about $25.00, during the voyage to New York, and was informed by said doctor that the defendant appeared to be suffering from great mental excitement, and that her mind seemed to — becoming very much affected, and advised the complainant to humor her as much as possible, and if she wished to go to New England to allow her to do so; and that, on arriving in New York, the complainant, at a great sacrifice to himself and his business interests, which required his atten- after four months' absence, took the defendant to Boston and wrote to a hotel at Rye Beach, in New Hampshire, for apartments for himself and the defendant, but, while in London, the nurse had advised the defendant to go to a hospital, and she had conceived an idea that she desired

to go to a hospital, and went to St. Margaret's hospital, in Boston, and remained there several weeks, but, before doing so, greatly provoked and exasperated the complainant by informing him that she had promised some one, whose name the complainant could not discover, that she would not live with the complainant again, but about three weeks thereafter she accompanied the complainant to Baltimore.

28. On the trip from Boston to Baltimore the complainant and defendant stopped at Philadelphia, at the Hotel Stafford, where the defendant again acted in a peculiar and remarkable manner, refusing to go to supper at the Hotel Bellevue, which is on the opposite side of the street from the Hotel Stafford (both hotels being under the same management), but finally did so.

29. In the latter part of November, 1891, she got into a rage with the complainant about three o'clock in the afternoon, and thereupon packed her trunks and took the five o'clock train to Boston against the will of the complainant, but, after remaining there several days, returned to the complainant, in Baltimore; and several months later repeated this performance, and whenever the complainant endeavored to prevent any of these absurd and ridiculous trips to Boston the defendant flew into a rage, violently abused the complainant, and then insisted that she was being badly treated.

30. During the first part of the summer of 1892 the defendant made several violent and dangerous attacks upon the complainant, so that he was frequently obliged to hold her hands to prevent her from doing him serious injury; upon several occasions she completely exhausted herself endeavoring to strike at and pound the complainant, but during the latter part of the summer and the autumn of said year the demeanor of the defendant was more docile, and on the 2d of January, 1893, the complainant took the defendant and her infant daughter to Boston; but on the 9th of January she got into a terrible rage with the complainant, in Boston, and used such violent and abusive language to him that he took the train and went to New York, where he remained several weeks, and then went to Philadelphia, where he received a letter from the defendant informing him she was going to have another operation performed, and he immediately sent a letter to the defendant objecting to said operation and refusing to become a party to it; but he is informed and beli-ves that she had the operation performed.

31. Subsequently, in the latter part of May, her mother being about to close the house in Boston for the summer, she returned with her infant daughter Alice to the complainant, near Catonsville, stopping to get from the residence of the complainant's mother a photograph of the complainant's first wife, and taking it with her to the residence at Catonsville, saying the poor thing would be so lonesome in the city all alone. During the months of June and July the demeanor of the defendant was docile, but in August she again began to get into violent rages and make terrible attacks upon the complainant; and about this time, the complainant having informed her that he understood a bachelor could live in a flat in

New York comfortably on $100 per month, she threw a book at the complainant, striking him in the face with great force, and unwarrantably and unjustifiably insisted that the complainant himself had a flat in New York, and was the person referred to.

32. That about the 10th of September, 1893, while the complainant was sitting at a desk reading a book, the defendant read an extract aloud from a newspaper, and made a comment upon it in connection with the complainant, to which comment the complainant made a jocular reply, whereupon the defendant silently approached him from behind and struck him a terrible blow upon the side of the head with great violence, and otherwise attempted to injure the complainant, who thereupon held her hands until her rage subsided, and then continued his reading. The defendant, however, continued in a rage for the next several days, refused to drive with the complainant, and, finally, having received a letter from her brother suggesting to her to spend the following winter in Boston, packed her trunks and on the 25th day of September, 1893, accompanied by her infant daughter, went to Boston.

33. Subsequently the complainant and defendant corresponded, and in March, 1894, the complainant went to Boston and called to see the defendant, and although on one day she was in a gracious humor, when he called on the next day her humor had entirely changed without any apparent reason or cause whatever, and although the defendant has been frequently requested to return to the complainant, she has failed and refused to return, and has cruelly and unwarrantably deserted and abandoned the complainant without interruption since the 25th day of September, 1893, and if said marriage ceremony be valid the defendant is in fault in living apart from the complainant.

12. That the defendant has abandoned the complainant, and the separation of the parties is beyond any reasonable expectation of reconciliation.

13. That there are no children.

14. That the complainant has not sold or converted any of the property of the defendant, and she has an ample separate estate, yielding her an ample income of over $1,200 per annum and has an additional allowance of $1,200 per annum for the support of her infant daughter, Alice S. Larkin.

15. That there is no liability on the part of the complainant for alimony, separate maint*a*inance or counsel fees, and he pleads the deed of release and contract aforesaid, a copy of which is annexed hereto, marked "Complainant's Exhibit A," as aforesaid, and which it is prayed may be taken as a part of this bill of complaint, in bar of any right of recovery against him by the defendant of said alimony, maint*a*inance or counsel fees; and the said complainant specially sets up and claims that the said deed of release and contract constitutes a valid contract, in which the defendant abandoned all her rights in the property of the complainant, and which said contract cannot be abridged or impaired; and he relies on the statute of frauds and the Constitution of the United States, art. 1st,

sec. 10, art. 6, sec. 2, and the 14th amendment, as fully as if said sections and amendment were set out at large herein.

To the end, therefore:

1. That your orator may be divorced *a vinculo matrimonii* from the said Mary Ball Chappell;

2. That your orator may have a decree of nullity of marriage;

3. That your orator may have such other and further relief as his case may require;

May it please your honor to grant unto your orator the order of publication giving notice to the said Mary Ball Chappell, residing in the city of Boston, State of Massachusetts, of the object and substance of this bill, and warning her to appear in this court by person or solicitor, on or before a certain day, to be named therein, to show cause, if any she have, why a decree ought not to pass as prayed.

And as in duty bound, your orator, &c.,

THOMAS C. CHAPPELL,
Complainant and Solicitor in Person.

(Affirmation and certificate.)

COMPLAINANT'S EXHIBIT "A."

"This deed of release, constituting an antenuptial agreement between Thomas C. Chappell, of Baltimore county, State of Maryland, and Mary Ball Larkin, of Portsmouth, county of Rockingham, State of New Hampshire:

Witnesseth, that in consideration of marriage, and other valuable considerations, namely, the sum of five dollars paid to each of the parties hereto by the other, the promise of each of the parties hereto to waive and release all rights in the property of the other which would otherwise be acquired by marriage between the parties hereto and said Thomas C. Chappell and the said Mary Ball Larkin, hereby release all the right, title and interest each would otherwise be entitled to in all and every property of the other, real, personal or mixed, wherever situate, either by right of dower, courtesy, heir, next of kin, as widow or husband, as to thirds or as to a half or as to all of said property now held or hereafter acquired, and all of them in any other capacity whatever, and either by community or entirety, or survivorship or in any other tenancy whatsoever, and in every manner whatsoever, so that the property of the parties hereto may be as free and unencumbered and saved to each of the parties hereto as if the marriage aforesaid had never taken place; and the said Thomas C. Chappell and the said Mary Ball Larkin each covenant that they will give such further assurance as may be necessary and proper.

Witness our hands and seals, this fourth day of May, A. D. eighteen hundred and ninety-one:

Test: THOMAS C. CHAPPELL. [SEAL.]
MARY BALL LARKIN. [SEAL.]

Witness:
ANDREW J. MORTON."

STATE OF MASSACHUSETTS, }
County of Suffolk, } *ss:*

On this fifth day of May, A. D. eighteen hundred and ninety-one, personally appeared before me, Thomas C. Chappell and Mary Ball Larkin, and did each acknowledge the aforegoing deed to be their respective act.

[SEAL.] ANDREW J. MORTON,
Notary Public.

The words, "the sum of five dollars paid to each of the parties hereto by the other," on page 1st, between lines 8 and 9, and the words, "now held or hereafter acquired," on page 1st, between the lines 22 and 23, were inserted before acknowledgment, of signatures.

ANDREW J. MORTON,
Notary Public.

* * * * * * *

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To the end, therefore:

1. That your orator may be divorced *a vinculo matrimonii* from the said Mary Ball Chappell;

2. That your orator may have a decree of nullity of marriage;

3. That your orator may have such other and further relief as his case may require;

May it please your honor to grant unto your orator the order of publication giving notice to the said Mary Ball Chappell, residing in the city of Boston, State of Massachusetts, of the object and substance of this bill, and warning her to appear in this court by person or solicitor, on or before a certain day, to be named therein, to show cause, if any she have, why a decree ought not to pass as prayed.

And as in duty bound, your orator, &c.,

THOMAS C. CHAPPELL,
Complainant and Solicitor in Person.

(Affirmation and certificate.)

COMPLAINANT'S EXHIBIT "A."

"This deed of release, constituting an antenuptial agreement between Thomas C. Chappell, of Baltimore county, State of Maryland, and Mary Ball Larkin, of Portsmouth, county of Rockingham, State of New Hampshire:

Witnesseth, that in consideration of marriage, and other valuable considerations, namely, the sum of five dollars paid to each of the parties hereto by the other, the promise of each of the parties hereto to waive and release all rights in the property of the other which would otherwise be acquired by marriage between the parties hereto and said Thomas C. Chappell and the said Mary Ball Larkin, hereby release all the right, title and interest each would otherwise be entitled to in all and every property of the other, real, personal or mixed, wherever situate, either by right of dower, courtesy, heir, next of kin, as widow or husband, as to thirds or as to a half or as to all of said property now held or hereafter acquired, and all of them in any other capacity whatever, and either by community or entirety, or survivorship or in any other tenancy whatsoever, and in every manner whatsoever, so that the property of the parties hereto may be as free and unencumbered and saved to each of the parties hereto as if the marriage aforesaid had never taken place; and the said Thomas C. Chappell and the said Mary Ball Larkin each covenant that they will give such further assurance as may be necessary and proper.

Witness our hands and seals, this fourth day of May, A. D. eighteen hundred and ninety-one:

Test: THOMAS C. CHAPPELL. [SEAL.]
MARY BALL LARKIN. [SEAL.]

Witness:
ANDREW J. MORTON."

STATE OF MASSACHUSETTS, }
County of Suffolk, } *ss:*

On this fifth day of May, A. D. eighteen hundred and ninety-one, personally appeared before me, Thomas C. Chappell and Mary Ball Larkin, and did each acknowledge the aforegoing deed to be their respective act.

[SEAL.] ANDREW J. MORTON,
Notary Public.

The words, "the sum of five dollars paid to each of the parties hereto by the other," on page 1st, between lines 8 and 9, and the words, "now held or hereafter acquired," on page 1st, between the lines 22 and 23, were inserted before acknowledgment, of signatures.

ANDREW J. MORTON,
Notary Public.

* * * * * * *

IN THE

Supreme Court of the Unit

THOMAS C. CHAPPELL,
Plaintiff in Error,
vs.
MARY BALL CHAPPELL,
Defendant in Error.

Term No. 478.
October Term, 1896.

Motion of Plaintiff in Error.

To the Honorable the Chief Justice
and the Associate Justices of said Court:

Thomas C. Chappell, the plaintiff in error, moves this honorable Court to strike from and take off the files the motion of the defendant in error herein, to dismiss the writ for want of jurisdiction and the motion to affirm united therewith:

I. Because the record in this case is not yet complete; and the plaintiff in error has filed a petition for a writ of *certiorari* with an affidavit in accordance with Rule 14 of this Court, and said motions to dismiss and affirm are prematurely filed.

II. Because the defendant in error has not printed the record.

III. Because the plaintiff in error specially set up and claimed in his originai bill of complaint a right, title, privilege, and immunity, under Article 1, Section 10, and Article 6, Section 2, and the 14th Amendment of the Constitution of the United States, and the decision is against the right, title, privilege, and immunity specially set up and claimed by the plaintiff in error in his said original bill of complaint and subsequent pleadings.

IV. Because the extracts from the transcript of the record printed by the defendant in error do not fairly present the case; and the brief filed by the defendant in error deliberately misstates the facts as they appear from the record.

V. Because the right of the State Court to proceed after the Circuit Court of the United States for the District of Massachusetts assumed jurisdiction is involved. (See 112 U. S., 294.)

THOMAS C. CHAPPELL,
Plaintiff in Error.

165-720 (corrected)
perhaps best to insert in bound volume with the rest of papers in the case.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, PLAINTIFF IN ERROR,

vs.

MARY BALL CHAPPELL.

To the Honorable the Chief Justice and the Associate Justices of said Court:

And now comes the said Thomas C. Chappell and moves this honorable court to pass an order directing the clerk of this court to take off the files the original petition for writ of error in this case, which was inadvertently transmitted to this court with the transcript of the record by the clerk of the court of appeals of Maryland, and directing the clerk of this court to retransmit the said original petition for writ of error to the clerk of the court of appeals in Maryland.

THOMAS C. CHAPPELL,
Plaintiff in Error.

Notice of Motion.

Messrs. SAMUEL T. MADDOX and DAVID STEWART,
Solicitors for Defendant.

SIRS: Take notice that on Monday, the 14th day of March, 1898, at 12 o'clock noon, I shall move the Supreme Court of the United States in accordance with the foregoing motion.

THOMAS C. CHAPPELL,
Plaintiff in Error.

CITY, COUNTY, AND STATE OF NEW YORK, *ss:*

I hereby certify that on this 9th day of March, 1898, before me, the subscriber, a notary public in and for the said New York county, personally appeared Thomas C. Chappell and made oath in due form of law that he served a copy of the foregoing motion and notice of motion upon the attorneys for the defendant by depositing a copy thereof in the United States mail letter-box, in said city of New York, on the said 9th day of March, 1898, duly stamped and directed, and addressed to David Stewart, at his office, No. 213 St. Paul street, Baltimore, Md.

In testimony whereof I have hereunto set my hand and affixed my seal notarial the day and date last above written.

[SEAL.] JAMES WOODS,
Notary Public, New York Co. (*No.* 132).

[Endorsed:] Case No. 16,240. Supreme Court U. S., October term, 1897. Term No., 478 of 1896. Thomas C. Chappell, plaintiff in error, *vs.* Mary Ball Chappell. Motion to withdraw original petition for writ of error. Filed Mar. 10, 1898.

Office Supreme Court, U. S.
FILED.
FEB 4 1897
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, PLAINTIFF IN ERROR,

vs.

MARY BALL CHAPPELL.

SUGGESTION OF DIMINUTION OF RECORD AND MOTION FOR WRIT OF CERTIORARI.

THOMAS C. CHAPPELL, *Pro se.*

(16,240)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, PLAINTIFF IN ERROR,

vs.

MARY BALL CHAPPELL, DEFENDANT IN ERROR.

PETITION FOR WRIT OF CERTIORARI FOR DIMINUTION OF RECORD.

To the Honorable the Chief Justice and the Associate Justices of said Court:

The petition of Thomas C. Chappell, the plaintiff in error, shows to this honorable Court:

I. That he filed in the lower court a petition for a writ of error on the 9th day of January, 1896, and subsequently filed in said court an additional petition for a writ of error, a copy of which is herewith filed, marked Petitioner's Exhibit "A," which it is prayed may be taken as a part hereof, reference being had thereto; and he also filed in said court, in connection with said petition, a certified copy of certain

docket entries in a case depending in the circuit court for Baltimore city.

II. That on the 20th day of February, be filed in the lower court a certain motion, a copy of which is herewith filed, marked Petitioner's Exhibit "B," which it is prayed may be taken as a part hereof, reference being had thereto, but that said motion was marked filed February 22, 1896, instead of February 20, 1896, and that there was filed with said motion a copy of a certain petition filed by the defendant in the *nisi prius* court on or about the 16th day of January, 1896, while the case was still in the court of appeals, a copy of which said petition is herewith filed, marked Petitioner's Exhibit "C," which it is prayed may be taken as a part hereof, reference being had thereto, and a copy of a certain order of said *nisi prius* court passed on said petition, a copy of which is herewith filed, marked Petitioner's Exhibit "D," which it is prayed may be taken as a part hereof, reference being had thereto; and there was also filed with said motion a certified copy of the docket entries of the lower court.

That your petitioner filed in said court a motion to correct the docket entries so that the proper date of filing said motion might appear.

That your petitioner has not been able to get any action on said motion until the 29th day of January, 1897, when he filed a renewal of the motion to correct the said docket entry in the court of appeals of Maryland and incorporated a motion in said renewal that leave be granted to him to strike out the first four paragraphs of said motion filed February 20, 1896, and marked filed February 22, 1896, as aforesaid.

III. That said petitions for a writ of error and said motions and said copy of the petition filed by the defendant in the *nisi prius* court and the said order of the court thereon and

said copy of said docket entries have been omitted from the transcript of the record transmitted to this Court herein.

IV. That your petitioner has not made an application heretofore because of the failure of the court of appeals to act upon his motion for the correction of the docket entry as to the date of filing said motion, and the copy of the defendant's petition filed in the *nisi prius* court, and the order of said court thereon, and the certified copy of the docket entries annexed to and filed in connection with said motion.

V. That on the 29th day of January the court overruled said renewal of motion, as will more fully appear from a letter received by the plaintiff in error from the clerk of said court, a copy of which is herewith filed, marked Petitioner's Exhibit "E," which it is prayed may be taken as a part hereof, reference being had thereto.

Wherefore your petitioner prays that a writ of certiorari may issue, commanding the court of appeals of Maryland to certify to this honorable Court, by a certain day named in said writ, the said portions of the record omitted as aforesaid from the transcript of the record in the above-entitled case sent to this Court.

And, as in duty bound, etc.

THOMAS C. CHAPPELL.

UNITED STATES OF AMERICA,
State of Maryland, City of Baltimore, } *ss:*

I hereby certify that on this 30th day of January, A. D. 1897, before me, the subscriber, a notary public of the State of Maryland in and for the city of Baltimore aforesaid, personally appeared Thomas C. Chappell and made oath in due form of law that the matters and facts stated in the aforegoing petition are true to the best of his knowledge and belief.

In testimony whereof I hereunto set my hand and affix my notarial seal the day and year last above written.

[SEAL.] SAMUEL S. BOGGS,
Notary Public.

PETITIONER'S EXHIBIT "A."

IN THE COURT OF APPEALS OF MARYLAND.

THOMAS C. CHAPPELL, *Appellant,*
vs.
MARY BALL CHAPPELL, *Appellee.*

To the honorables the chief judge and the associate judges of said court:

And now comes the said Thomas C. Chappell, the appellant, and says:

I. That prior to the decision of this court in this case he filed a petition for a writ of diminution and a motion for a re-argument on a proper record.

II. That the orders passed in this cause are orders for the payment of money, and the appeal taken therefrom, on page 36 of the Record, is a good appeal if the two appeals previously taken are defective, and is directly within article 5, section 25, volume 1, page 25, Code Public General Laws of Maryland, which provides "An appeal may be also allowed in the following cases, to wit: From any order for the sale, conveyance, or delivery of real or personal property or the payment of money," and that said appeals are improperly dismissed because they are directly within the provisions of the code aforesaid.

III. That on the 13th day of December the said appellant filed herein the petition aforesaid, and at the time this

decision was rendered the motion for a re-argument on a proper record was on file, and your petitioner in that said petition and motion shows to this court that there has been omitted from the record a material part thereof, and that the said record is false, in that it states that the appellee filed a petition on the 8th of May asking leave to file her cross-bill at the time she filed it; on the contrary, your petitioner shows she filed her answer incorporating a cross-bill on May 8, 1895. The appellant excepted to the filing of the same on May 9, 1895, and then she came in and filed a petition for leave to file said cross-bill, and said cross-bill was filed without leave; and your petitioner further shows that the opinion of the court was an error of fact in this regard on this record, and this is a most material part of the record, and this error is due to the fact that the said record is false.

IV. That the said petition for said writ was presented to this court on the 13th day of December, 1895, but the court, being about to adjourn, postponed action in the matter, and your petitioner says that the said petition has never been acted on by this court.

V. That in his bill of complaint, and in his answer to the petition of the appellee, and in his motion to rescind the order *nisi* passed thereon and to dismiss said petition of the appellee, your petitioner specially set up and claimed a right, privilege, and immunity under article 1, section 10, and under the fourteenth amendment of the Constitution of the United States, as well as under the constitution of the State of Maryland.

VI. That the orders of the lower court passed herein are against the right, privilege, and immunity specially set up and claimed and should be overruled.

VII. That the petition for a writ of diminution and for re-argument, filed herein prior to any decision of this court herein, also specially sets up and claims a right thereunder; that the decision of this court and the order dismissing said appeals is against the right, privilege, and immunity specially set up and claimed in three different papers in the record and in the petition filed in this court as well.

VIII. That said petition for a writ of diminution and motion for re-argument show that the defect in the record is no fault of the appellant.

IX. That the pleadings of the appellant on the record show that he is a citizen of the United States and subject to the jurisdiction thereof, and on page 19 of the Record he sets out section 1 of the fourteenth amendment at large: "All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

X. That the lower court passed two orders in this case for the payment of money, as appears from the record, in impairment of the antenuptial deed and contract specially set up and pleaded as a bar thereto, and refused to allow the appellant to dismiss his bill without the payment of said money.

XI. That the appellant insists that he has the right to have his bill stand dismissed as of the time he made the application, and that it is one of the reserved rights of the people under the tenth amendment of the Constitution of

the United States; that the lower court gave him leave to dismiss on the payment of $250 counsel fees to the attorneys of the appellee, and he did dismiss said bill, and he insists that the said bill stands dismissed as of the time he made the application, and that there is no cross-bill in the case; that the whole proceeding stands dismissed, and that he took an appeal from so much of the court's order as imposed upon him the payment of money (Record, p. 25), and that said appeal is a good appeal under article 5, section 25, volume 1, Code Public General Laws. Thereupon the said court passed another order for the payment of money, and he appealed from that also, and that the equal protection of the laws entitles him to appeal from said orders for the payment of money (art. 5, sec. 25, Code Pub. Gen. Laws of Maryland aforesaid); that his right to said appeal is so plainly within the provisions of the code that he did not submit any authority on the question. The order of the lower court, on page 33 of the Record, is as express an order for the payment of money as it is possible for a court to pass, and is a denial of the immunity specially set up and claimed under article 1, section 10, and the fourteenth amendment aforesaid of the Constitution of the United States, pleaded in the record as a bar to any liability for such payment. The determination of this court on this appeal is a final determination and is against the said immunity, so that this court is denying the right, privilege, and immunity without appearing to decide the question, and is ruling on the question raised in the appeals while appearing to dismiss them, and this is the highest court in the State to which said appeals can be taken, and the said ruling of said court is a final determination against the right, privilege, and immunity specially set up and claimed under article 1, section 10, and under the fourteenth amendment of the Constitution of the United States, on the record.

XII. That the Record shows, on page 35, that the appellant is a citizen of the city, county, and State of New York, and the appellee (Record, p. 1) is a citizen of the State of Massachusetts; that the appellant applied to dismiss his bill (Record, p. 20) two weeks prior to the time that the cross-bill was filed; that the Record further shows (page 35) that the appellant dismissed his original bill; that the lower court has no jurisdiction to proceed further in the cause, and that a writ of error lies to the Supreme Court of the United States under section 709 of the Revised Statutes of the United States.

XIII. That the appellant never filed any plea, demurrer, or answer to the cross-bill herein, because the same was improperly filed, and said appellant has always insisted that no right had accrued to the said appellee at the time he made his application to dismiss his original bill; that he was entitled to dismiss it on the 25th day of April, 1895, and to have the order allowed, which he on that day tendered to the court, as set out in his petition for a writ of diminution and re-argument; that at the time the said appellee filed said cross-bill she had no right to file it, and at that time she had an original bill for divorce against your petitioner depending, unheard, undetermined, and undismissed in the circuit court for Baltimore city.

XIV. That the appellant ought to have a full and proper record upon which to present to the Supreme Court of the United States the questions involved arising in the Constitution of the United States, and that the writ of diminution prayed in his petition should be allowed to bring up the portion omitted.

XV. That the answer and cross-bill should be omitted from the record for the reasons set forth in said petition for a writ of diminution.

Wherefore, that the orders aforesaid for the payment of money under an authority exercised under the State being repugnant to the said articles, clauses, and sections of the Constitution of the United States aforesaid, and the decision in favor of the validity of such an authority, and the refusal of the court to sign the order tendered on the 25th day of April, 1895, that the bill of complaint herein stand dismissed upon the payment of costs, and the decision of this court in denying to the appellant the equal protection of the laws in dismissing said appeals and in abridging the privileges and immunities of the appellant, a citizen of the United States, in remanding to the lower court for trial a cause which the said appellant has dismissed against the title, right, privilege, immunity, and exemption set up and claimed under the Constitution of the United States, to the great damage of this appellant; and that all other questions in the record and proceedings arising in the Constitution and laws of the United States specially set up and claimed, where the decision is repugnant to the said Constitution and laws, may be re-examined and reversed in the Supreme Court of the United States, may it please this honorable court to allow to your petitioner a writ of error to the said Supreme Court of the United States.

And your petitioner will ever pray, &c.

THOMAS C. CHAPPELL.

STATE OF NEW YORK,
City and County of New York, } *To wit:*

I hereby certify that on this 13th day of January, 1896, personally appeared before me, the subscriber, a notary public in and for the city, county, and State of New York, the said Thomas C. Chappell and made oath in due form of law that the matters and things stated in the aforegoing petition are true to the best of his knowledge and belief.

(Signed) J. C. WOODS,
[NOTARIAL SEAL.] *Notary Public.*

PETITIONER'S EXHIBIT "B."

IN THE COURT OF APPEALS OF MARYLAND. IN EQUITY.

THOMAS C. CHAPPELL, *Appellant*,
vs.
MARY BALL CHAPPELL, *Appellee*.

The petition of the said Thomas C. Chappell shows to this honorable court:

1st. That the judge who wrote the opinion in this case, before he was appointed to be a judge of this court, was attorney with one R. Emmett Jones for a certain Jacob Funk, instituted against your petitioner a suit for fifteen hundred dollars for damages alleged to have been occasioned to the garden of said Funk by acid vapors from the sulphuric acid manufactory of said Chappell.

2d. That as a matter of fact there was no damage whatever occasioned to the vegetation of said Funk by the said manufactory of said Chappell, and the said Funk had been operating his garden about twenty years without complaining prior to the time he fell into the hands of the said R. Emmett Jones, an attorney-at-law, who associated with the Hon. Wm. Shepherd Bryan, at that time an attorney-at-law.

3d. That not wishing to disclose the secret process of manufacture employed in said factory, which at that time was unknown generally, your petitioner compromised said suit for a sum of about six hundred and fifty dollars, supposing that would settle the matter, but said settlement was merely an incentive to the said attorneys of the said Funk to institute other suits against your petitioner, which your petitioner believes were instituted partly, if not altogether, upon a contingent fee.

4th. That your petitioner, by his attorneys, the late S. Teakle Wallis and the late Richard S. Gittings and others, prevented the said Funk and his said attorneys from succeeding in said suits, and the said William Shepard Bryan, judge of this court, has ever since cherished feelings of resentment against your petitioner, and that your petitioner is prejudiced by the trial of this case before said judge.

5th. That in the opinion in this case the said Judge Bryan cites only two cases in equity, which are cited to show that the appeal from the opinion of the court filed June 11, 1895, was improperly taken; that an examination of these cases shows that the court of appeals in the said cases has laid down the rule that a judicial opinion of the court is synonymous with its decree, and in Pearson's case, in 27th Maryland, this court, after referring to the case of Hagthorp *vs.* Hook, says:

"This emphatic distinction between opinion and 'judicial opinion' leaves no doubt of the difference in their legal effect, the former being interlocutory and the other final in its character."

And your petitioner respectfully says that the opinion filed June 11, 1895, in this cause was a judicial opinion and final in its character and synonymous with the decree; that the appeal therefrom was properly taken.

6th. That the complainant did not rely on said appeal from said opinion alone, but at the suggestion of David G. MacIntosh, as attorney for your petitioner, who filed the said order for said appeal, the circuit court for Baltimore county made a formal order on June 15, 1895, in accordance with said opinion, and the said appeal was taken from so much of said formal order as well as from so much of said opinion as provided that the complainant pay two hundred and fifty dollars counsel fees.

7th. That the said opinion and the said order, so far as they provided for the payment of money by the complainant, are in impairment of the deed of release and contract pleaded in the bill of complaint and construe said contract, which is as fully before the Court upon the appeal from said opinion and order as it could possibly be at any future stage of the case or at the final hearing, if the lower court had any jurisdiction to proceed to a final hearing, and the appeal from said opinion and order is authorized by the rule laid down by this court in Thompson *vs.* McKim, 6 H. & J. (See pages 313, 328, and 331.)

8th. That this court has laid down the following rules:

"Where the subject-matter of a controversy is already in possession of a court of competent jurisdiction, public policy and judicial comity require that its actions shall not be interfered with by any other court of concurrent jurisdiction."

That the bill of complaint in this cause was for a decree of nullity, and that the bill of complaint filed in the circuit court of the United States for the district of Massachusetts was also for a decree of nullity, and the said circuit court of the United States for the district of Massachusetts had jurisdiction in such case.

9th. That the defendant had no right to come into this court and file her petition on the 3d of April, 1895, the said petition being in impairment of her own deed, and because at that time there was depending in the circuit court for Baltimore city a petition filed by the same defendant for the same relief unheard, undetermined, and undismissed, as fully appears from the 7th paragraph of the answer which the complainant in this cause filed on the 16th day of April, 1895, which said answer sets up the defense of said previous cause pending, which, under the law of the State, may be taken by answer as well as by plea. And your petitioner

also filed a motion that the order *nisi* passed on the defendant's petition be rescinded and the said petition dismissed, and both the lower court and this court absolutely ignored this valid, legal defense of the complainant to the petition filed by the defendant, and there never was any hearing in the lower court on the said petition and answer or on the said motion to rescind the order *nisi* and dismiss the petition of the said defendant in this cause, the only hearing being upon the right of complainant to dismiss his bill; and this case was not before this court upon any question of fact, but upon questions of law only as to the right of the complainant to dismiss his bill and the right of the court to pass orders for the payment of money in impairment of the obligation of contract and the right of the court to pass the order on the 26th day of July, 1895, neither party at that time being domiciled in the State, and no trial of the facts ever having been had on the defendant's petition and the answer thereto, and no hearing on the motion to rescind the order *nisi* and dismiss said petition, which said order was passed on the 26th day of July, 1895, by said court while an appeal was pending from the previous opinion and order of said court, and contains no provision for service and was never served on complainant; and the complainant insists that the said court had no jurisdiction or legal authority to pass said order, especially so much thereof as provides that your petitioner should pay two thousand dollars.

10th. That at the time said court passed said order it had no jurisdiction, because neither party was domiciled in this State, the jurisdiction of the said court upon this bill of complaint for a decree of nullity being analogous to its jurisdiction in a bill for divorce, in which the law is as follows:

"Jurisdiction for divorce depends on domicile."

"That if both parties are domiciled out of the State where

the divorce is granted, such State having no control of their status, has no right to dissolve it."

"On the other hand, if neither party is domiciled in the State, the marriage cannot be dissolved, even though the parties voluntarily appear."

"No jurisdiction without statute. Colonies carry with them laws, but not courts, and so the ecclesiastical courts, which alone in England could grant divorces, were not imported into this country, and the jurisdiction of such courts can be obtained only by statute. Therefore in the United States all divorce jurisdiction is statutory, and no court can grant a divorce except for parties and causes provided by statute."

"If neither of the parties was domiciled in the State granting the divorce, such divorce has no *exterritorial* validity, although both parties submitted themselves to the jurisdiction of the court."

That the record in this case shows that neither of the parties was domiciled in the State when the court passed the order on the 26th day of July, 1895, for alimony *pendente lite* and counsel fees, and it must be apparent to this court that the lower court could not pass an order in a case of such a nature, which had terminated for want of jurisdiction in the said court, irrespective of the application of the complainant to dismiss his bill.

11th. That if said lower court had any jurisdiction in the said cause at the time it passed said order on the 26th day of July, 1895, the said order is repugnant to the bill of rights of the State and to the Constitution of the United States; and the said court had no right to pass the same, because the complainant, in his answer to the petition of the defendant, denies the allegations of the said petition; and if the said petition be not dismissed, together with the bill of complaint and all other proceedings had thereon, and be not dismissed on the defense of a previous cause pending, and if the said lower court had jurisdiction to proceed further in the case and try the same on its merits, your

petitioner is entitled to frame issues and have the facts tried by a jury; and in the sixth paragraph of his answer he says "that he denies that he is the reputed owner of Ten Hills, a valuable country place in Baltimore county, and he denies that he has an income of about twelve thousand dollars a year, or that he is amply able to provide for or pay her five thousand dollars a year for her support, or pay her anything whatever;" and your petitioner insists that the lower court had no right to make the order *nisi* final with such a denial on the record, and that this court in its opinion has utterly omitted to notice that portion of the said denial wherein your petitioner denies that he is able to "pay her anything whatever."

12th. That while this case was still pending in this court on the petition for diminution and on motion for reargument, there was filed in the lower court a petition upon which said court passed an order, a copy of which is herewith filed, marked Complainant's Exhibit "A," which it is prayed may be taken as a part of this petition, reference being had thereto; that the said lower court had no jurisdiction to pass said order for the payment of said money into court, because it has no right to proceed in this cause, and "admitted an incontrovertible state of facts is required as the foundation of an order to bring money into court." (6th H. & J., p. 319.)

13th. That at the time the defendant filed an answer incorporating a cross-bill in this case, on the 8th day of May, 1895, without any petition for leave to file said cross-bill being filed, as will more fully appear from a copy of the docket entries filed herewith, marked Complainant's Exhibit B, reference being had, there was still depending, unheard, undetermined, and undismissed, in the circuit court for Baltimore city, in equity, a bill of complaint between the same parties, on the same cause of action, and for the same relief, wherein the

said Mary Ball Chappell is complainant and the said Thomas C. Chappell is the defendant, and she had no right to file a cross-bill in this cause and was not domiciled in this State at the time she filed said cross-bill, wherein she complained against the said Thomas C. Chappell, and neither party being domiciled in this State, the said lower court has no authority of law to proceed further in said cause.

Wherefore your petitioner prays that this honorable court will pass an order directing the said lower court to proceed no further, and to strike out the order it passed on the 16th of January, 1896, and the order it passed on the 26th of July, 1895, and so much of its order passed on the 15th of June, 1895, and so much of its opinion rendered on the 11th of June, 1895, as imposes upon the complainant the payment of money in impairment of the deed of release and contract on the record, and that the bill of complaint filed by your petitioner and all proceedings had thereon may stand dismissed as of the time he applied to dismiss the same, to wit, on the 25th day of April, 1895.

THOS. C. CHAPPELL.

[Endorsed:] Copy. In the court of appeals of Maryland. Thomas C. Chappell, appellant, *vs.* Mary Ball Chappell, appellee. In equity. Petition for an order directing the lower court to proceed no further. Mr. Clerk: Please file.

PETITIONER'S EXHIBIT "C."

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY.

THOMAS C. CHAPPELL
vs.
MARY BALL CHAPPELL.

To the Honorable Judge of said Court:

The petition of Mary Ball Chappell respectfully showeth:

1. That on July 26, A. D. 1895, this court passed an order finally ratifying its order of April 3, 1895, ordering Thomas C. Chappell to pay to Mary Ball Chappell $100 a month in advance, beginning from April 1, 1895, as alimony, $500 as suit money, and $1,000 as attorney's fees.

2. That said Thomas C. Chappell took an appeal from said order, which appeal has been dismissed.

3. That no part of said order has been satisfied.

4. That for the protection of your petitioner said order should be expressly made a lien on all the property of said Thomas C. Chappell in the State of Maryland.

5. That said order should be enforced against said Chappell by proceedings for contempt of this honorable court.

Wherefore your petitioner prays your honor to pass such orders.

And, as in duty, &c.

DAVID STEWART.

STATE OF MARYLAND,
City of Baltimore.

I hereby certify that on this 16th day of January, in the year one thousand eight hundred and ninety-six, before me, the subscriber, a justice of the peace of the State of Maryland in and for the city of Baltimore, personally appeared David Stewart and made oath in due form of law that the matters and facts stated in the foregoing petition are true to the best of his knowledge and belief.

SAMUEL PINKERTON,
Justice of the Peace.

PETITIONER'S EXHIBIT "D."

Order.

On the aforegoing petition and affidavit it is hereby ordered, this 16th day of January, in the year one thousand eight hundred and ninety-six—

1. That the order of this Court, passed in this case on April 3, 1895, and made final by an order passed July 26, 1895, be, and the same is hereby, made a lien and charge against all the property of Thomas C. Chappell in the State of Maryland.

2. That said Thomas C. Chappell satisfy said order by paying into this court or to the solicitors of Mary Ball Chappell, $1,000, being alimony *pendente lite* from April 1, 1895, to January 1, 1896; $500 as suit money, and $1,000 as attorney's fees, within ten days after a service of a copy of this order upon himself or upon David G. McIntosh, his attorney, under penalty of being punished for contempt of this court.

N. CHARLES BURKE.

PETITIONER'S EXHIBIT "E."

STATE OF MARYLAND, COURT OF APPEALS.

ANNAPOLIS, *Jan'y* 29, 1897.

THOMAS C. CHAPPEL, Esq.

MY DEAR SIR: Your favor of the 28th inst., with inclosure, to hand. I have filed your motion and called the attention of the court to it, and also to your letter accompanying the motion. The court has overruled the motion.

Yours truly, J. FRANK FORD.

[Endorsed:] Case No. 16,240. Supreme Court U. S., October term, 1896. Term No., 478. Thomas C. Chappell, P. E., *vs.* Mary Ball Chappell. Suggestion of diminution of record and motion for writ of certiorari. Filed February 1, 1897.

Office Supreme Court, U. S.
JAN 12 1897
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, Plaintiff in Error,

vs.

MARY BALL CHAPPELL.

In Error to the Court of Appeals of the State of Maryland.

Brief for Defendant in Error on Motion to Dismiss or Affirm.

SAMUEL MADDOX,
For Defendant in Error.

NOTICE OF MOTION.

To THOMAS C. CHAPPELL, Esq.,
Counsel for Plaintiff in Error.

Sir:—You are hereby notified the within motion, with the brief and argument annexed thereto, will be presented to the Supreme Court of the United States on Monday, the first day of February, A. D. 1897, at the convening of said court.

(Signed) SAMUEL MADDOX,
DAVID STEWART,
Counsel for Defendant in Error.

LAW REPORTER PRINT.

Office Supreme Court, U. S.
JAN 12 1897
CLERK.

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DAVID STEWART,
Counsel for Defendant in Error.

LAW REPORTER PRINT.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, PLAINTIFF IN ERROR,

vs.

MARY BALL CHAPPELL, DEFENDANT IN ERROR.

MOTION TO DISMISS OR AFFIRM.

And now comes the defendant in error, and moves the court to dismiss the writ of error herein for the following reasons:

1st. This court has no jurisdiction of the case.

2d. There is no Federal question arising on the Record filed in this court, and no Federal question was actually decided by the court below or necessarily involved in the judgment by it rendered.

Or to affirm the judgment of the Court of Appeals of the State of Maryland herein on the grounds—

1st. Although the Record may show that this court has jurisdiction, it is manifest that the writ of error was taken only for delay.

2d. That, although the Record may show that this court has jurisdiction, the question on which the jurisdiction depends is so frivolous as not to need further argument.

SAMUEL MADDOX,
DAVID STEWART,
Counsel for Defendant in Error.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1896.

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2d. That, although the Record may show that this court has jurisdiction, the question on which the jurisdiction depends is so frivolous as not to need further argument.

SAMUEL MADDOX,
DAVID STEWART,
Counsel for Defendant in Error.

STATEMENT OF THE CASE.

This is an ordinary suit for divorce brought by the plaintiff in error against his wife in the circuit court for Baltimore County, Maryland. When the defendant in error answered the bill and filed a cross-bill, she presented a petition (Rec. 1) showing that she had been living apart from her husband, owing to his fault, for more than eighteen months; that she was without means of her own except about $800 a year; and that she was in debt and without means to live properly during the pendency of the suit, and of paying the costs and expenses of prosecuting the same. The petition further discloses that on the morning of her marriage she released all rights in her said husband's property, but avers that the release was obtained by undue influence, and that a suit was then pending to set it aside. The petition claimed that the release, even if valid, would not relieve her husband of his obligation to support her, or affect her right to allowance for her support during the suit and for counsel fees. The petitioner also charged that her husband was a man possessed of large means, some $12,000 a year, and amply able to pay her $5,000 a year for her support. She also gives instances of petty annoyances heaped upon her lawyers by her husband, which made it all the more difficult and expensive for her to procure counsel. The petitioner concludes her petition with the averment that she has been without fault towards her husband, and prays for a reasonable monthly allowance for her support and for a reasonable counsel fee.

Upon this petition an order was passed (Rec., p. 4) April 3, 1895, awarding the petitioner $100 a month alimony *pendente lite*, $500 for expenses of suit, and $1,000 counsel fees, unless cause to the contrary was shown within a certain time fixed by the order.

A few days later the plaintiff in error answered the petition, without denying any of the material averments thereof. Upon this answer he moved the court to dismiss

the petition of his wife, above recited, and to rescind the order of April 3, awarding the wife an allowance for her support, for costs of suit and counsel fees. (Rec., pp. 7 and 8.)

Before this motion was called up for hearing, nine days later, the plaintiff in error filed a motion in the cause, asking that his bill of complaint and all proceedings had thereon might be dismissed, for the reason that a similar bill had been filed by him in the United States court in Boston, and that he had elected to try the validity of his marriage and the validity of the deed of release in that court. (Rec., p. 9.)

Defendant in error answered this motion, and both motions having been argued together on June 8, 1895, the court filed an opinion on the 11th of June, 1895, wherein it is held that the plaintiff in error may dismiss his bill on payment of the costs of suit, to be taxed by the clerk, and a counsel fee of $250. (Rec., p. 10.)

Four days later this ruling of the court was embodied in an order, and the plaintiff in error appealed. (Rec., p. 11.)

On the 26th day of July, 1895, an order was passed upon the other motion making final the order for $1,000 counsel fee, $500 suit money, and $100 per month alimony, passed April 3, 1895, unless the plaintiff dismiss his bill on or before the 10th of August, 1895, and pay the costs of suit and counsel fee provided in the opinion of the court filed June 11, 1895. From this order the plaintiff in error appealed. (Rec., p. 12.)

All of these appeals were dismissed in the Maryland Court of Appeals, after a full discussion by the court of the cases as presented, both on the merits and on the ground that the orders appealed from were not appealable orders. From this order, dismissing all the appeals with costs, the plaintiff in error sued out a writ of error to this court. (Rec., p. 16.)

ARGUMENT.

I.

No Federal question was raised in the Court of Appeals of Maryland, and therefore this court has no jurisdiction to review the judgment of that court.

Section 709 of the Revised Statutes, under which alone this court can review the judgment of a State court, provides for such review only when there is "*drawn in question*" the validity of a statute, etc., and the decision is against the title, right, privilege or immunity, "specially set out or claimed," etc. In other words, Section 709 does not provide for the review of the decision of any State court unless a Federal question is distinctly raised in that court. To this effect are repeated decisions of this court.

Susquehanna Boom Co. *vs.* W. B. Boom Co., 110 U. S. 57.
Simmerman *vs.* State of Nebraska, 116 U. S. 54.
Loeber *vs.* Schroeder, 149 U. S. 580–585.
Otis *vs.* Morgan Steamship Co., 116 U. S. 548.
Morrison *vs.* Watson, 154 U. S. 111–115.
Chappell *vs.* Bradshaw, 128 U. S. 132.
Bushnell *vs.* Crooke Mining Co., 148 U. S. 689.

In the case at bar, this court will look in vain to find any Federal question raised on the record in the Court of Appeals of Maryland. None of the pleadings filed in the lower court raised any such question.

As no Federal question was raised *on the record*, it is not necessary or proper for this court to go outside of the record, to see whether or not any Federal question was in fact *decided*.

Murdock *vs.* Memphis, 20 Wall. 590.
In re William Robertson, 156 U. S. 184.
Duncan *vs.* Missouri, 152 U. S. 377.

II.

Even if any pretended Federal question was raised or called to the attention of the State court, yet there was really no Federal question involved, and for this reason, also, the writ of error should be dismissed for want of jurisdiction.

The questions involved in this case on the pleadings in the Court of Appeals of Maryland were all of them questions of common law principles and procedure.

The suit is for divorce, brought by a husband against his wife, a previous suit, having the same object in view, having been begun by Chappell in the Circuit Court of the United States for one of the Districts of Massachusetts, and not concluded when the present suit was instituted. In her petition (Rec., p. 1) the defendant in error shows that—

> "she is in debt, and that she is wholly destitute of means of living properly during the pendency of this suit and of paying the costs and expenses attending the prosecution of the same."

In such cases, almost as a matter of course, a wife, whether complainant or defendant in a divorce suit, is entitled to an order for alimony *pendente lite*, suit money and counsel fees.

> 2 Bishop, Marriage, Divorce and Separation, Secs. 911 and 976.
> Stewart on Marriage and Divorce, Secs. 383–391.
> Tyler, Infancy and Coverture, Sec. 676.

In Maryland, the principles of the ecclesiastical courts and of the chancery courts combine and govern this matter.

> Code 1888, Art. XVI, Sec. 14, p. 134.
> H. G. *vs.* J. G., 33 Md. 406.
> Rohrbach *vs.* Rohrbach, 75 Md. 317.

Under this well established practice, the Maryland court passed the order for alimony *pendente lite*, counsel fees and suit money, from which the plaintiff in error appealed.

At a later stage in the cause, the plaintiff in the action (plaintiff in error here) made a motion to dismiss, not his bill of complaint alone, but "also all proceedings had thereon." This order the court granted on condition that the plaintiff should pay all costs, and a counsel fee of $250. (Rec., p. 11.)

Such an order was entirely within the province of a chancery court.

2 Daniel Ch. Pr. 1553, n. 3.
Owen *vs.* Owen, 54 Ga. 526.
Jenness *vs.* Jenness, 24 Ind. 355.
Musselman *vs.* Musselman, 44 Ind. 106, 115.
Stere *vs.* Stere, 2 Ill. App. 223, 227.
Dewees *vs.* Dewees, 55 Miss. 315.
Schira *vs.* Schira, L. R. 1 P. & D. 466.

Plaintiff had not the absolute right to dismiss his bill after answer and cross bill filed. Recognizing this, he asks the leave of the court to dismiss the bill *and all proceedings had thereon*. The leave was granted on terms not unusual—the payment of costs and a reasonable counsel fee.

It is well settled that such questions are not Federal questions, and cannot be made the basis of a writ of error to bring a judgment of a State court for review before this court.

The decisions of this court are unanimous to this effect.

Smith *vs.* Adsit, 16 Wall. 185.
In re Graham, 138 U. S. 461.

This court has no jurisdiction to review the judgment of the Maryland Court of Appeals in this case, whether that judgment be regarded as resting on the principles of general law (144 U. S. 458) or whether it be regarded as resting on

the construction of the Code of the State of Maryland (144 U. S. 647), or whether that judgment rests partly on the principles of general law, and partly on the construction of the Maryland Code.

If the decision of the Maryland Court of Appeals be regarded as a decision touching the proper procedure in the State court, this court will not take jurisdiction on the writ of error to correct its judgment.

Mere matters of procedure in State courts do not ordinarily involve Federal questions.

Triff *vs.* Santa Rosa Street Ry. Co., 144 U. S. 126.
Holey *vs.* Breeze, 144 U. S. 130.

For these reasons the writ of error should be dismissed on the ground that no Federal question was involved in the case.

III.

If, however, this court should hold that it has jurisdiction of this case, then the judgment of the Maryland Court of Appeals should be affirmed, on the ground that the question on which the jurisdiction depends is so frivolous as not to need further argument.

The pretended Federal question is set up in the answer of plaintiff in error to the petition of defendant in error asking allowance for suit money, etc. (Rec., p. 6.), and is renewed in his motion to dismiss said petition. (Rec., p. 8.) It is difficult to understand just what it is for which the plaintiff in error is contending. But it would seem that he claims immunity from the payment of alimony, suit money and counsel fees because of a certain antenuptial contract or deed of release. This contract or deed of release the Maryland Court of Appeals had the fullest right to consider, but held that it did not exempt the husband from the common law incidents of divorce suits, and decreed accordingly. Of this the plaintiff in error now

complains, and contends that the Maryland Court of Appeals did not fully appreciate the force and effect of his ante-nuptial contract with his wife, or, in other words, *misconstrued* the contract.

But it is respectfully submitted that there is no constitutional inhibition against State courts misconstruing contracts, disregarding them, or even abrogating them altogether.

In conclusion, we beg to say that defendant in error has now for nearly two years been seeking through one of the simplest actions known to the law, to obtain recognition of her marital rights, which the State courts at every step, and after every form of legal opposition that could be conceived of, have declared she is entitled to. We feel that this court will see, on but a short inspection of the record, that the present writ was sued out merely for delay, and believe we are justified in asking that the same be dismissed, or the judgment of the Court of Appeals of Maryland be affirmed, with damages for delay, as provided by the rules of this court, including a reasonable fee to counsel for defendant in error for preparing and presenting this motion.

In the language of the Maryland Court (Rec., p. 15):

> "The record does not show any excuse for such repeated vexation. So far as we can see it is inspired by a spirit of animosity and oppression, which merits severe rebuke. It would be cruel to permit the expenses of these suits to be thrown upon a helpless woman."

SAMUEL MADDOX,
DAVID STEWART,
Counsel for defendant in error.

165-720

Office Supreme Court, U. S.
FILED.
FEB 1 1897
JAMES H. McKENNEY,
CLERK.

165-720

IN THE

Supreme Court of the United States.

IN EQUITY.

TERM No. 478. **OCTOBER TERM, 1896.**

THOMAS C. CHAPPELL, *Plaintiff in Error,*

vs.

MARY BALL CHAPPELL, *Defendant in Error.*

In Error to the Court of Appeals of the State of Maryland.

BRIEF FOR THE PLAINTIFF IN ERROR.

THOMAS C. CHAPPELL,

Plaintiff in Error and Solicitor in Person.

165-720

Office Supreme Court, U. S.
FILED.
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165-720

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IN EQUITY.

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In Error to the Court of Appeals of the State of Maryland.

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THOMAS C. CHAPPELL,

Plaintiff in Error and Solicitor in Person.

IN THE

Supreme Court of the United States.

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vs.

MARY BALL CHAPPELL, *Defendant in Error.*

In Error to the Court of Appeals of the State of Maryland.

BRIEF FOR THE PLAINTIFF IN ERROR.

Statement of the Case.

The defendant has tendered a motion to dismiss the writ of error for want of jurisdiction, and has united, with said motion to dismiss the writ of error, a motion to affirm, but has not printed the record, and the extracts from the transcript of the record, which the defendant has printed, do not fairly present the case; the bill of complaint in which the plaintiff in error, who was the plaintiff below, raised the Federal question, in the first instance, and specially set up and claimed a right, privilege and immunity, under article 1, section 10; article 6, section 2, and the 14th amendment of the

Constitution of the United States, and various other important and material parts of the record, in which the Federal question is further urged and relied on, are omitted. The last order for an appeal in the case, filed August 22, 1895, is omitted. The motion of the plaintiff in error to take off the files an answer incorporating a cross bill, which the defendant in error filed after the plaintiff in error had applied to dismiss his bill, also the motion of the defendant in error to withdraw her cross-bill, and the leave granted to her by the Court to withdraw said cross-bill, also the renewed motion filed by the attorney for the plaintiff in error, in the lower Court, and certain exceptions, in which the Federal question is further raised, urged and relied on in the lower Court, are all omitted. And the extracts from the transcript of the record printed by the defendant, is so prepared as to create an entirely false impression on this Court.

The statement in the motion to dismiss, that "there is no Federal question arising on the Record," has no foundation in fact. The Federal question is raised in the original bill of complaint, which the defendant in error has omitted to print; it is raised in the motion to dismiss the defendant's petition for alimony and counsel fees, also in the answer to said petition, and also in certain exceptions, which the plaintiff in error filed in the *nisi prius* Court, to the final order of the Court passed on the 26th day of July, 1895, which said exceptions the defendant has neglected to print; and it is further raised in a petition for a writ of diminution filed in the Court of Appeals of Maryland, which the defendant in error has also neglected to print. The brief filed by the defendant in error contains at the very outset an absolute misstatement of fact. It says, "when the defendant in error answered the bill and filed a cross-bill, she presented a petition"; this is not the fact. If the record was properly printed, the Court would see how absolutely false this statement is, and how vital it is to the defendant in error that the true state of the facts be not grasped by the Court. This petition referred to was filed thirty-five days before her answer incorporating a cross-bill, which said answer incorporating a cross-bill was not filed

until two weeks subsequent to the date the plaintiff applied to dismiss his bill, and said answer incorporating a cross-bill was then filed too late. These are the facts as they will fully appear from the transcript of the record when properly printed:

1st. That on the 13th day of March, 1895, the plaintiff in error, who was the complainant below, filed in the Circuit Court for Baltimore county, on the equity side of said Court, an original bill of complaint, for a decree of nullity of marriage, praying among other things, an order of publication against the defendant in error, and in said original bill, raised a Federal question, as will more fully appear from the 15th paragraph of said bill, which is as follows, to wit:

"15. That there is no liability on the part of the complainant for alimony, separate maintenance or counsel fees, and he pleads the deed of release and contract aforesaid, a copy of which is annexed hereto, marked Complainant's Exhibit 'A,' as aforesaid, and which it is prayed may be taken as a part of this bill of complaint, in bar of any right of recovery against him by the defendant, of said alimony, maintenance or counsel fees; and the said complainant specially sets up and claims that the said deed of release and contract constitutes a valid contract, in which the defendant abandoned all her rights in the property of the complainant, and which said contract cannot be abridged or impaired; and he relies on the Statute of Frauds, and the Constitution of the United States, article 1, section 10, article 6, section 2, and the 14th amendment, as fully as if said sections and amendment were set out at large herein."

2d. That on the 30th day of March, 1895, the defendant in error, who was the defendant below, without any order of publication being published, and without any *subpœna* being issued, and without any copy of said bill of complaint being served, and before any proceedings *de lunatico inquirendo*, could be put *in fieri*, made an affidavit to a petition, in the City of Boston, which said petition contains the following prayer: "Wherefore your petitioner prays your Honor to pass an order

requiring said Thomas C. Chappell to pay her, monthly, a reasonable allowance for her support, and to pay her a reasonable counsel fee." Which said petition was filed in said case in said Court, by certain attorneys, purporting to act for said defendant, on the 3d day of April, 1895, *thirty-five days before any answer or cross-bill was filed,* and on the same day, to wit, the 3d day of April, 1895, before any copy of said petition had been served on the plaintiff in error, and without any opportunity to be first heard, on the title, right, privilege and immunity specially set up and claimed, under the Constitution of the United States, in his original bill, the said Court passed the following order, to wit: "On the aforegoing petition and affidavit, it is hereby, this 3d day of April, A. D. 1895, ordered by the Circuit Court for Baltimore County, that Thomas C. Chappell be, and he is hereby ordered and directed to pay:

"(1.) One hundred dollars per month in advance, beginning from April 1, 1895, to Mary Ball Chappell, through her solicitors, Frank I. Duncan and David Stewart, during the continuance of this suit, as alimony *pendente lite*, and five hundred dollars for expenses of this suit.

"(2.) One thousand dollars to said Mary Ball Chappell, through her solicitors, Frank I. Duncun and David Stewart, as counsel fees, unless cause to the contrary be shown on or before April 16, A. D. 1895; provided, a copy of this order be served on said Thomas C. Chappell on or before April 10, A. D. 1895.

"N. CHAS. BURKE."

3d. That on the 16th day of April, 1895, the plaintiff in error filed in said Court the following motion, to wit:

"And now comes Thomas C. Chappell and moves this Honorable Court to dismiss the petition of the above defendant, and to rescind the order *nisi* passed herein on the 3d day of April, 1895, upon said petition, because said petition contains an unnecessary recital of documents, *in haec verba* * * * and because the complainant, in the bill of complaint filed in this cause, has specially set up and claims a right, privilege

and immunity under the Constitution and Laws of the United States; and said order *nisi* passed in this cause is in derogation of said right, privilege and immunity in said bill of complaint set up and claimed, and is against said right; and the said right, privilege and immunity specially set up and claimed as aforesaid, arises under a deed of release and contract, which is valid and in full force and effect, as alleged in said bill of complaint, and is a valid contract; and the plaintiff relies on Article 1, section 10, of the Constitution of the United States of America, 'no State shall pass any law impairing the obligation of contract,' and the 14th Amendment to said Constitution, 'all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law.'

"And according to the terms of said contract, the property of the complainant is as free, unencumbered and saved to him as if said marriage had never taken place, and there is no difference in law between said property, and the income which arises from it, and there is no evidence before the Court, that the complainant has any income other than that arising from his said property, which under the terms of said contract is exempt as aforesaid; and said Mary Ball Chappell is estopped by her said grant, and her covenant that he shall stand seized of said property, free, clear and exempt as aforesaid, and the said order was obtained from the Court upon a false statement.

"And as alleged in the bill of complaint herein, the complainant herein resides in the State of Maryland and the defendant herein resides in the State of Massachusetts, and both of said parties were born in the United States, and are subject to the jurisdiction thereof, and are citizens of the States wherein they reside as aforesaid; and this controversy is between citizens of different States as aforesaid." (Extracts from transcript of Record, printed by defendant in error, pages 7-8.)

4th. That the plaintiff in error on said 16th day of April, 1895, also filed answer to the petition filed by the defendant in error, in which the Federal question is further urged and relied on. (Extracts from transcript of the Record, printed by defendant in error, pages 5-7.)

V. *That before any answer or cross-bill had been filed, and before the said motion to dismiss the petition of the defendant had been set down for hearing or argued, and before any other proceedings were had,* the plaintiff in error, on the 25th day of April, 1895, filed a petition in said Court, (see extracts from record printed by defendant, pages 8-9,) containing the following prayer: "Wherefore this complainant prays that his bill of complaint filed herein, and all proceedings had thereon, may be dismissed"; and on the same day presented said petition to said Court, with an order prepared for the Court, to date and sign which, said order was as follows, to wit: "On the foregoing petition and affidavit, it is hereby, this day of April, 1895, ordered by the Circuit Court for Baltimore county, that the bill of complaint filed in this cause, and all proceedings had thereon, stand dismissed upon payment of costs."

VI. Your petitioner insisted on his right that the order tendered to the Court, that said bill and all proceedings had thereon, stand dismissed with costs, without the payment of any counsel fees, alimony or suit money be allowed. The Court refused to sign said order, and insisted on an order *nisi* and passed the following order on said petition, to wit: "Upon the petition of Thomas C. Chappell, filed in this Court on the 25th of April, 1895, it is ordered that the defendant shows cause on or before the 11th day of May, 1895, why the prayer and motion of said petition should not be granted, provided the defendant or her attorney of record have notice by service of this order five days previous to said hearing.

N. CHARLES BURKE."

(Extracts from transcript of Record, page 9.)

VII. That said notice was duly served on the defendant's attorney, but that said defendant did not show any cause why the prayer and motion of the said petition, that the bill of complaint and all proceedings had thereon, stand dismissed, should not be granted; but on the 8th day of May, without first obtaining the leave of the Court, attempted to file an answer incorporating a cross-bill, to the filing of which the plaintiff excepted as follows, on the 9th day of May, 1895, to wit: "Thomas C. Chappell excepts to the filing of an answer in which is incorporated a cross-bill in this cause, after the complainant has filed a petition dismissing his bill of complaint in this cause, and all proceedings had thereon, and prays that the same be stricken from the files." After which, the Court passed an order granting leave to file a cross-bill.

VIII. On the 11th day of May, in accordance with the Chancery practice of Maryland, the day named in the order *nisi* aforesaid, just before the rising of the Court, the plaintiff in error, by D. G. McIntosh, his attorney, moved the Court to pass an absolute order, allowing the bill of complaint and all proceedings had thereon to stand dismissed, as of the 25th day of April, 1895, the day upon which the application was presented to the Court, and the Court refused to pass said order, although no cause was shown, against the prayer and motion of the petitioner.

IX. That on the 8th day of June, the plaintiff in error, by his aforesaid attorney, filed the following renewal of motion, which was on the same day argued, to wit: "The plaintiff, Thomas C. Chappell, renews the motion and petition to dismiss his bill of complaint, filed by him in this Court, on the 25th of April, 1895, the same having been presented to this Court on that day for its action, and no answer or cross-bill having then been filed to the plaintiff's bill; and no order of Court allowing any cross-bill to be filed; and no summons or order of publication having been issued upon said bill of complaint; and nothing thereunder having been done by the defendant, except her voluntary appearance to the action and

petition for alimony and counsel fees; and, also, that said cross-bill and answer be stricken from the files.

"[Signed.] D. G. McIntosh,
"*Atty. for Plaintiff.*"

This motion is omitted from the extracts printed by defendant.

X. That said Circuit Court for Baltimore County delivered the following judicial opinion, on the 11th day of June, 1895, to wit:

"Upon the petition of plaintiff, filed April 25, 1895, for leave to dismiss his bill of complaint: I have examined the proceedings and considered the arguments of the respective counsel made at the hearing on Saturday last. I am of opinion that, in the condition of the case at the time of filing of the petition, the plaintiff should not be permitted to dismiss his bill, without first paying the costs of the case, and a reasonable counsel fee to the attorneys for his wife. For these he is clearly liable under the well-settled law and practice of this State. Under the circumstances, I think a counsel fee of two hundred and fifty dollars would be a moderate allowance for counsel fees to the defendant's attorneys. Upon the payment of this sum and the cost of suit, to be taxed by the clerk, leave will be granted to the plaintiff to dismiss the bill, without prejudice, however, to the defendant to institute such proceedings against the plaintiff as she may be advised is proper.

N. Charles Burke."

(Extracts from transcript of record, page 10.)

XI. That on the 15th day of June, 1895, said Court passed and filed the following order, to wit:

"Upon the application of the plaintiff in this case to dismiss his bill, it is, by the Court, this 15th day of June, 1895, ordered that leave be granted, upon the payment by the plaintiff of the costs of the case to be taxed by the clerk, and

upon the payment to the defendant's attorneys of record, David Stewart and Frank I Duncan, the sum of two hundred and fifty dollars for counsel fees.

N. CHARLES BURKE."

(Extracts from transcript of Record, page 11.)

XII. That your petitioner thereupon filed an order for an appeal from the said judicial opinion and from said order of said Court, the said decision being against the title, right, privilege and immunity specially set up and claimed by your petitioner, the plaintiff in error, the complainant below, in his original bill, and in his various other pleadings on the record, said order for said appeal being filed in said Court on the 15th day of June, 1895, subsequent to the filing of said order of said Court.

XII. That the defendant, thereupon, on the 20th day of June, 1895, filed a petition to withdraw her answer incorporating her cross-bill, and the Court granted said motion, but the defendant in error has omitted to show this to this Court.

XIV. That about the middle of June, 1895, the plaintiff changed his residence from the State of Maryland to the city, county and State of New York, which will appear from exceptions filed by the plaintiff in error, in the *nisi prius* Court, on the 7th of August, 1895, which the defendant has omitted to print in the extracts from the transcript of the Record.

XV. That on the 20th day of June, 1895, the defendant in error, in this action filed an original bill against your petitioner in the said Circuit Court for Baltimore county, it being the third bill for divorce she had filed against your petitioner upon the same cause of action in less than six months thereto preceding; one in the Circuit Court for Baltimore City, which was filed prior to filing her answer incorporating her cross-bill in the case at bar, which said bill in the Circuit Court for Baltimore City is still unheard, undetermined and undismissed,

and still pending in said Circuit Court for Baltimore City, the cross-bill in the case at bar, and her original bill filed in the Circuit Court for Baltimore County, on the 20th day of June, 1895, as aforesaid.

XVI. That on the 16th day of July, 1895, after the appeal was taken in this case at bar, and without ever having set down for hearing the motion filed by the plaintiff on the 16th day of April, moving the Court to dismiss the petition for alimony and counsel fees, "and to rescind the order *nisi* passed herein on the 3d day of April, 1895, upon said petition," the Court passed the following order, to wit:

"In the matter of the petition for alimony, expenses of suit and counsel fees, argued before me on Saturday, June 8th, A. D. 1895, having considered the matter and the arguments of the respective counsel, I am of the opinion that the order for $1,000 counsel fee, $500 suit money and $100 per month alimony, hereinbefore passed, should be made final, unless the plaintiff shall dismiss his bill by the time and upon the terms hereinafter limited; and it is accordingly, this 26th day of July, A. D. 1895, ordered by the Court, that the order *nisi* passed in this case on the 3d of April, A. D. 1895, on the defendant's petition for alimony, be and the same is hereby made final and effective, unless the complainant shall, on or before the 10th day of August, A. D. 1895, in accordance with the opinion of the Court in this case, filed June 11th, 1895, dismiss his bill for divorce and pay the defendant's costs to be taxed by the clerk and the counsel fee therein provided for.

N. CHARLES BURKE."

(Extracts from transcript of Record, pages 11–12.)

XVII. That on the 7th day of August, the plaintiff in error filed certain exceptions to the said order of said Court, and paid the costs of the suit and gave the clerk an order dismissing his said bill, without abandoning, however, his previous appeal from so much of the order of the Court filed June 15, 1895, as was against the right, privilege and immunity specially set

up and claimed under the Constitution of the United States; and your petitioner shows to this Honorable Court that the order of the Court passed on the 26th day of July, 1895, was passed after an appeal had been taken from the previous order passed June 15th, 1895, and is against the right, privilege and immunity specially set up and claimed in his original bill, and in his answer to the defendant's petition and in his motion to dismiss the defendant's said petition, and that the Court rescind the order *nisi* thereon; that said motion presented the case directly to said Court; and that there is no provision in said order passed on July 26th, 1895, for service or notice to the plaintiff; the said exceptions to said order and the other proceedings had in said case, which the defendant in error has omitted to print, are as follows, to wit:

EXCEPTIONS.

(Filed August 7th, 1895.)

THOMAS C. CHAPPELL
vs.
MARY BALL CHAPPELL

In the Circuit Court for Baltimore County.
In Equity.

To the Honorable, Judge of said Court:

And now comes Thomas C. Chappell, appearing gratis, specially for the purpose of excepting to the order of this Court, passed July 26th, 1895.

First.—Because more than thirty days prior to the date upon which said order was passed, this exceptant entered an appeal in this cause prosecuting to the Court of Appeals his right to dismiss his bill of complaint, without paying counsel fees to the defendant's attorneys, and at the time said order was passed, on July 26th, 1895, the said cause was depending in the Court of Appeals, and not in this Court, and that the said order is passed *ultra vires.*

Second.—Because said order, passed July 26th, 1895, imposes a penalty upon its exceptant for taking said appeal from the order of this Court, passed June the 11th, 1895, which said right of appeal is secured to him, both by the laws of the

State of Maryland and of the United States, and this said order passed July 26th, 1895, is not due process of law, and is repugnant to the 14th Amendment of the Constitution of the United States, and to the laws of the United States, under which this exceptant specially sets up and claims a right, privilege and immunity.

Third.—Because in any event this Court is debarred from depriving this exceptant, under the color of a law, custom, regulation and usage of the State, of a right, privilege and immunity secured to him by the Constitution and laws of the United States. And the said order of this Court, passed July 26th, 1895, as well as the orders previously passed herein, are in impairment of the obligation of the deed of release and contract which is duly recorded among the Land Records of Baltimore County, on or about the 11th day of September, 1891, a copy of which is attached to and filed with his bill of complaint in this cause, duly verified by affidavit, and all of said orders are repugnant to Article 1st, Section 10, of the Constitution of the United States, and are not due process of law.

And the said Thomas C. Chappell, reserving all his rights of appeal from said orders and otherwise herein, says he did tender to dismiss his bill and pay the costs, and hereby again tenders to dismiss his bill of complaint and pay his costs, and also hereby waives any immunity to which he is entitled herein from paying the defendant's costs herein, and tenders to pay them also, as taxed by the clerk, and dismisses his bill of complaint, so far waiving his immunity from now paying said costs, and he is entitled to under the appeal previously taken herein, but he does not waive his immunity under said appeal from paying the counsel fees provided for in the order of this Court, passed June the 11th, 1895, from which an appeal was thereupon taken, and he does not waive any other right, privilege, or immunity herein, and says that the order *nisi*, passed April the 3rd, 1895, should not be made final as a penalty for not paying counsel fees, provided for in said order from which he has appealed, or for any other reason, and the exceptant is informed and believes the defendant dismissed

her petition for alimony and counsel fees, and all her other proceedings herein.

And shows to this Court that the order passed July 26th 1895, was improvidently passed and should be set aside by this Honorable Court, *sua sponte*, and further shows, that at the time said order was passed, and at this time, this exceptant has no attorney at law, or in fact in this cause, and no copy of said order has been served upon him, and at the time said order was passed and at this time, he is a citizen of the city, county and State of New York, as will more fully appear upon the Records of this Court, upon a plea filed by him on the 16th day of July, 1895, and this Court has no jurisdidtion to pass said order on July 26th, 1895, and the same is inoperative and void.

THOMAS C. CHAPPELL, *P. P.*

CITY, COUNTY AND STATE OF NEW YORK, *ss.*

I hereby certify, that on the 6th day of August, 1895, before me, the subscriber, a notary public, in and for the city, county and State of New York, personally appeared the aforesaid Thomas C. Chappell, and made oath in due form of the law that the matters and things set forth in the aforegoing pleading are true, to the best of his knowledge and belief.

(Seal.) THOS. M. APPLEGARTH,
Notary Public.

ORDER TO CLERK.

(Filed August 8th, 1895.)

THOMAS C. CHAPPELL, *Plaintiff*,		
vs.	}	In the Circuit Court for Baltimore County.
MARY BALL CHAPPELL, *Defendant.*		In Equity.

MR. CLERK:

Enter the bill of complaint in this cause dismissed, the costs of plaintiff and defendant having been this day paid and the

plaintiff having appealed from so much of the order of this Court, passed June 11th, 1895, as adjudged said plaintiff liable for the counsel fee of defendant therein provided for.

Witness my hand, this seventh day of August, 1895.

THOMAS C. CHAPPELL.

[NOTE BY CLERK.—On August 7th, 1895, the plaintiff paid all the Court costs of the suit, as taxed by the Clerk, except plaintiff's attorney's appearance fee, the plaintiff saying that he had no attorney in the case.]

ORDER FOR APPEAL.

(Filed August 12th, 1895.)

THOMAS C. CHAPPELL
vs.
MARY BALL CHAPPELL } In the Circuit Court for Baltimore County. In Equity.

MR. BACON, *Clerk:*

Please enter an appeal in this case from the order of the Court, passed July 26th, 1895, all rights under previous appeal being reserved.

THOMAS C. CHAPPELL.

ORDER FOR APPEAL.

(Filed August 22d, 1895.

THOMAS C. CHAPPELL
vs.
MARY BALL CHAPPELL } In the Circuit Court for Baltimore County. In Equity.

MR. L. M. BACON, *Clerk:*

Please enter an appeal from decretal order passed July 26th, 1895, in this case.

Dated August 16th, 1895.

THOMAS C. CHAPPELL.

CITY OF NEW YORK, COUNTY OF NEW YORK AND STATE OF NEW YORK, *ss:*

I hereby certify, that on the 16th day of August, 1895, personally appeared before me, the subscriber, a notary public, in

and for the said city, county and State of New York, Thomas C. Chappell, and made oath in due form of law, that the foregoing appeal is not taken for the purposes of delay.

JAMES WOODS,
Notary Public New York County.

And thereupon it is ordered by the Court here that a transcript of the record and proceedings of this Court in the cause aforesaid, with all things thereunto relating, be transmitted to the next Court of Appeals of Maryland.

And the same is transmitted accordingly.

Test: LEWIS M. BACON,
Clerk.

STATE OF MARYLAND,
Baltimore County, to-wit:

I, Lewis M. Bacon, clerk of the Circuit Court for Baltimore County, do hereby certify, that the aforegoing is a full and true transcript of the record and proceedings of said Court in the therein entitled cause, in conformity with the rules of the Court of Appeals relating thereto.

(Seal's Place.) In testimony whereof, I hereunto subscribe my name and affix the seal of said Circuit Court, this 31st day of August, A. D. 1895.

LEWIS M. BACON,
Clerk.

Plaintiff's costs, $20.70. Paid by plaintiff, less $10 appearance fee.

Defendant's costs, $11.70. Paid by plaintiff (as elsewhere noted.)

XVIII. That on the 8th day of January, 1896, the Court of Appeals of Maryland dismissed said appeals, and your petitioner insists that said dismissal of said appeals is a denial of the equal protection of the laws, and is repugnant to the right, privilege and immunity specially set up and claimed on the record under the 14th amendment of the Constitution of

the United States, and is against the right, privilege and immunity specially set up and claimed under the Constitution of the United States, on the record in four separate pleadings in the lower Court, and presented to said Court in the brief filed by the attorney for the plaintiff in error in the Court of Appeals of Maryland, as well as on the record, and in a brief which your petitioner filed in said Court on his own behalf. If the plaintiff in error is entitled to the immunity specially set up and claimed, under the Constitution and laws of the United States, these orders of the lower Court should not hang over him.

XIX. That on the 9th day of January, 1896, your petitioner filed in said Court of Appeals a petition for a writ of error to this Court and an assignment of errors.

XX. That on the 14th day of January, 1896, your petitioner filed in said Court of Appeals of Maryland, an additional petition for a writ of error. (See petition for writ of *certiorari*, filed by plaintiff in error.)

XXI. That while the case was still depending in the Court of Appeals on said petitions for a writ of error, and upon other proceedings had therein, and before the case had been remanded to the lower Court, the defendant filed in the lower Court, a petition, upon which the lower Court passed the following order, to wit: "On the aforegoing petition and affidavit, it is hereby ordered this 16th day of January, in the year one thousand eight hundred and ninety-six:

"1. That the order of this Court, passed in this case on April 3d, 1895, and made final by an order passed July 26th, 1895, be and the same is hereby made a lien and charge against all the property of Thomas C. Chappell, in the State of Maryland.

"2. That said Thomas C. Chappell, satisfy said order by paying into this Court, or to the solicitors of Mary Ball Chappell, $1,000, being alimony *pendente lite* from April 1st, 1895 to January 1st, 1896, $500 as suit money, and $1,000 attorney's

fees, within ten days after service of a copy of this order upon himself, or upon David G. McIntosh, his attorney, under penalty of being punished for contempt of this Court.

N. CHARLES BURKE."

(See petition for *writ of certiorari*, filed by plaintiff in error.)

That upon the 20th day of February, 1896, the plaintiff in error filed in the Court of Appeals of Maryland, a motion that the Court pass an order that the lower Court proceed no further, and on the same day he was illegally arrested by the sheriff for Baltimore city, upon an attachment issued from the Circuit Court for Baltimore County. On the 21st day of February, he renewed his petition for a writ of error and filed therewith an additional assignment of errors, and the Chief Judge of the said Court of Appeals of Maryland allowed said writ, and the transcript of the record was transmitted to this Court.

ARGUMENT.

Jurisdiction.

The plaintiff in error raised the Federal question in his bill of complaint in the manner prescribed by the most recent authority on jurisdiction of the United States Courts.

"On the other hand, in a suit in equity, if the complainant has a case where he wishes to raise such a question, the bill itself, by proper averments and charges, can raise the question."

Curtis' Jurisdiction of United States Courts, revised by Henry Childs Merwin, pub. 1896, see page 58.

The Federal question is also raised on the record in the motion to dismiss the defendant's petition and to rescind the order *nisi* passed thereon, and in the answer to said petition, and in the exceptions to the order of the Court passed July 26th, 1895, and in a petition for a writ of diminution filed in the Court of Appeals of Maryland.

The Federal question is not only raised, but the plaintiff in error specifically set forth the clauses of the Constitution under which he specially set up and claimed a right, title,

privilege and immunity. The plaintiff in error having specially set up and claimed an immunity from the payment of money under Article 1, section 10, and under Article 6, section 2, and under the 14th Amendment of the Constitution of the United States, in his bill of complaint, and subsequent pleadings on the record, the lower Court could not pass an order for the payment of the said money without involving the said Federal question. The orders of the Court are the exercise of an authority under the State, in deprivation of a right, title, privilege and immunity secured to the plaintiff in error by the Constitution and laws of the United States.

"The jurisdiction of this Court over the judgment of the highest Courts of the States, is not to be avoided by the mere absence of express reference to some provision of the Federal Constitution. Wherever rights acknowledged and protected by that instrument are denied or invaded under the shield of State legislation, this Court is authorized to interfere."

Murray vs. Charleston, 96 U. S. 432, see page 441, Mr. Justice Strong.

This Court laid down the rule more emphatically in 123 U. S.:

"We are aware that a right or immunity set up or claimed under the Constitution or laws of the United States, may be denied as well by evading direct decision thereon, as by positive action. If a Federal question is fairly presented by the record, and its decision is actually necessary to a determination of the case, a judgment which rejects the claim, but avoids all reference to it, is as much against the right, within the meaning of section 709 of the Revised Statutes, as if it had been specifically referred to and the right directly refused."

Chapman vs. Goodnow, 123 U. S. 540, see page 548, Mr. Chief Justice Waite.

Even if the federal question did not appear affirmatively on the record, this Court would have jurisdiction, but it does affirmatively appear, and is specifically set up and claimed.

"It is not always necessary that the Federal question should appear affirmatively on the record, or in the opinion, if an adjudication of such question were necessarily involved in the disposition of the case by the State Court.

"And this is so, even, although, the State Court, in its opinion, puts the decision entirely upon non-federal grounds."

Curtis,' Jurisdiction U. S. Courts, page 58, cases cited, **142** U. S. 254, 269; 123 U. S. 540, 548, and opinions delivered by Mr. Justice Field and Mr. Justice Harlan, with whom Mr. Justice Brewer concurred in O'Neil vs. Vermont, **144** U. S. 323.

This Court laid down the rule thus:

"When the Court may reasonably infer from the record in a case brought here by writ of error, from a State Court that the Federal question raised here was necessarily involved in the decision there, the Court will not dismiss the writ for want of jurisdiction, although it may not appear affirmatively in the record, that the question was raised there "

Eureka Lake Co. vs. Yuba County, 116 U. S. 410.

"The Act of Congress of 1867 gives jurisdiction to this Court over final judgments in the highest Court of a State in suits, 'where is drawn in question the validity of a statute of an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity.' Not a word is said respecting the mode in which it shall be made to appear that such question was presented for determination. In the present case it was necessarily involved, without any formal reference to any clause in the Constitution, and it is difficult to see how any such reference could have been made to appear expressly."

Murrary vs. Charleston, *ubi supra*, see page 441.
See also—1 Wall. 116.

In the case at bar, the plaintiff in error not only specially set up and claimed a right, privilege and immunity under the

Constitution of the United States, but he also drew in question the validity of an authority exercised under the State, on the ground of its being repugnant to the Constitution and laws of the United States.

The Court of Appeals of Maryland has laid down the rule that there is no difference between the passage of a law impairing the obligation of a contract, and the enforcement of a previous law impairing the obligation of contract, and this decision has been approved by this Court. The rule was originally laid down in the case of the Canal Co. vs. Railroad Co., by the Court of Appeals of Maryland.

"There being no difference in principle between a law which in terms impairs the obligation of a contract and one which produces the same effect in the construction and practical execution of it."

4 Gill & Johnson, 109.

This case is cited with approval in the West River Bridge Case by this Court. See 6 How. 507, see page 544.

The rule has recently been affirmed by the Court of Appeals of Maryland, in the case of the Turnpike Road vs. Railroad Co., in which Judge Bryan delivered the opinion of the Court:

"And it has been declared by this Court that there is no difference in principle between a law that in terms impairs the obligation of a contract, and one which produces the same effect in the construction and practical execution of it. 4 Gill and Johnson, 109."

81 Md. 247; see page 255.

The State has no more right to enforce or practically execute a law, or to exercise an authority which will impair a contract than it has to pass such a law.

Here, in this record, is a contract, providing, as follows, to wit:

"This Deed of Release constituting an ante-nuptial agreement between Thomas C. Chappell, of Baltimore county,

State of Maryland, and Mary Ball Larkin, of Portsmouth, County of Rockingham, State of New Hampshire,

Witnesseth, That in consideration of marriage and other valuable considerations, namely, the sum of five dollars paid to each of the parties hereto by the other and the promise of each of the parties hereto to waive and release all rights in the property of the other which would otherwise be acquired by marriage between the parties hereto, the said Thomas C. Chappell and the said Mary Ball Larkin hereby release all the right title and interest each would otherwise be entitled to in all and every property of the other real personal or mixed wherever situate, either by right of dower courtesy heir next of kin as widow as husband as to thirds or as to half or as to all of said property now held or hereafter acquired and all of them, or in any other capacity whatsoever, and either by survivorship or in any other tenancy whatsover and either by community or entirety survivorship and in every manner whatsoever, so that the property of the parties hereto may be as free and unencumbered, and saved to each of the parties hereto, as if the marriage aforesaid had never taken place; and the said Thomas C. Chappell and the said Mary Ball Larkin each covenant that they will give such further assurance as may be necessary and proper.

Witness our hands and seals this fourth day of May, eighteen hundred and ninety-one.

THOMAS C CHAPPELL. [Seal.]
MARY BALL LARKIN. [Seal.]

TEST:
Witness—ANDREW J. MORTON.

STATE OF MASSACHUSETTES, } *ss.*
County of Suffolk. }

On this fifth day of May, A. D., eighteen hundred and ninety-one, personally appeared before me, Thomas C. Chappell and Mary Ball Larkin, and did each acknowledge the aforegoing deed to be their respective act.

ANDREW J. MORTON.
[Seal.] *Notary Public.*

The words "the sum of five dollars paid to each of the parties hereto by the other," on page 1st, between lines 8 and 9, and the words "now held or hereafter acquired," on page 1st between lines 22 and 23, were inserted before acknowledgement of signatures.

ANDREW J. MORTON,
Notary Public."

Here is contract providing that the defendant in error releases every right in every capacity whatsoever in the property of the plaintiff in error, and that the property of the plaintiff shall be as free, uncumbered and saved to him as if the marriage had never taken place, and here in this case is an order of the Court in impairment of said contract and purporting to create a charge and lien on all the property of the plaintiff in error in the State of Maryland.

Does not the Constitution of the United States protect the plaintiff in error in his vested rights under said contract? Does this order of the Court not abridge a privilege and immunity of the plaintiff in error? Is it not the exercise of an authority under a State, taking away from the plaintiff in error a right, title, privilege and immunity secured to him by the Constitution of the United States? the right of property? The plaintiff in error did not rely upon the Constitution of the United States alone, but in his answer to the defendant's petition he also specially set up and claimed a right, privilege and immunity under the laws of the United States. "He specially sets up and claims under said deed of release and contract a right, privilege and immunity under Article 1, section 10, of the Constitution of the United States. 'No State shall pass any bill of attainder, *ex post facto* law or law impairing the obligation of contract,' and under the 14th Amendment of said Constitution, and under the laws of the United States, as fully as if set out at large herein."

(Extracts from transcript of Record, page 6.)

The laws of the United States not only protect every right secured by the Constitution of the United States, but give to

the party aggrieved a right of action against every person who subjects or causes to be subjected, any citizen of the United States, or other person within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws.

"Every person who, under the color of any statute, ordinance, regulation, custom or usage, of any State or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

Sec. 1979, Revised Statutes of the United States.

It is not necessary to set up in the record the particular clause of the Constitution or the law of the United States.

"A party relying on this Court for re-examination and reversal of the decree or judgment of the highest State Court, under the 25th section of the Judiciary Act, 1789, need not set forth specifically the clause of the Constitution of the United States on which he relies. If the pleadings make a case, which necessarily comes within the provisions of the Constitution, it is enough."

1 Wall. 116.

The same rule must apply to a law of the United States. Is not the defendant in error in this case causing the plaintiff in error to be subjected to a lien and charge on his property, although she has covenanted, his said property shall be as free, unencumbered and saved to him, as if the said marriage had never taken place? It cannot be contended that said lien and charge is not a direct violation of said contract.

The order of the Court requiring the plaintiff in error to pay money to the defendant in error or her attorneys, impairs a vested right of the plaintiff in error; do not the Constitution and laws of the United States protect vested rights?

"The word (property) is *nomen generalissimum*, and extends to every specie of valuable right and interest, including real

and personal property, easements, franchises and other incorporeal hereditaments. Standing alone, this includes everything that is the subject of ownership."

Am. & Eng. Ency. of Law, vol. 19, pages 285-286, and cases cited.

"Money is property."

Idem. page 288.

The plaintiff in error specially set up and claimed a right, title, privilege and immunity under the Constitution and laws of the United States in four separate pleadings on the record, he fairly shrieked the Federal question into the ears of the lower Courts, he specifically set forth the particular clauses of the Constitution relied on, and raised the question point blank on the record, and presented it to the Court, that by the express language of the deed of release and ante-nuptial contract, he is entitled to a privilege and an immunity, and no State can pass or enforce any law impairing the obligation of said contract, either by its written or unwritten law, and by the express language of the 14th amendment "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." This clause of the Constitution is broad enough to cover the unwritten as well as the written law of a State. The record shows that the plaintiff in error is a citizen of the United States. The express language of the contract creates the immunity, "and said Thomas C. Chappell and said Mary Ball Larkin, hereby release all the right, title and interest each would otherwise be entitled to in all and every property of the other, real, personal or mixed, wherever situate, either by a right of dower, courtesy, heir, next of kin, as husband, as to thirds or as to half or as to all of said property now held or hereafter acquired, and all of them, *or in any other capacity whatsoever*, and either by community or entirety or survivorship or in any other tenacy whatsoever, *and in every manner whatsoever*."

This language is surely broad enough to embrace alimony counsel fees or suit money, and the order requiring the plaintiff

in error to pay either alimony, counsel fees or suit money, to the defendant, is the enforcement of a law by the State, impairing the obligation of said contract and abridging the immunity of the plaintiff in error. The 14th Amendment expressly inhibits the enforcement of any such law, by its express language. The inhibition is not confined and limited to the legislative department of State government.

The lower Court could not pass an order requiring the plaintiff to pay money to the defendant or her attorneys without impairing the ante-nuptial contract and without deciding the Federal question adversely to the plaintiff in error, which he specially set up and claimed in his original bill.

Art. 1, sec. 10, of the Constitution, applies to the judicial and executive departments of State government, as well as to the legislative department; the language is broad enough to cover the whole State government.

All of the right, title, privilege or immunity to which the plaintiff in error is entitled by the express language of the contract is certainly protected by the Constitution of the United States, and the decretal orders in this case are in derogation of the said right, title, privilege and immunity. One of the rights secured and protected by the Constitution of the United States, is the right existing under contracts; that instrument inhibits the State from passing any law impairing the obligation of contract in any department of State government, so jealous is the Federal power of the rights secured by contract. A party can make a contract abandoning all rights she might otherwise had under the law, as it existed at the time the contract was made; this is particularly true of an ante-nuptial contract, and has been so decided by the Court of Appeals of Maryland. "The contract was made in contemplation of marriage, and as clearly appears, was intended to bar or prevent the acquisition of any right by either in the property of the other, in order that the proposed marriage might take place. The main object in view was the consummation of the marriage, and it was to that end the contract was executed. This, however, is not the case of a settlement, or jointure, but a contract by which the appellee

has expressly relinquished all right to claim any estate or interest in the property of her deceased husband. A contract executed in good faith by parties legally competent, as we have said, sustained by a consideration. Her power to bind herself by such a contract, in equity, must be admitted, and we do not doubt that this contract constitutes an equitable bar to the claim sought to be enforced by this bill. The authorities upon this point are full and conclusive. This is not a case in which the specific performance of the contract is sought by the appellants, as the appellee suggests, but one in which she seeks relief in violation of an agreement, which unimpeached, attaches to and suspends or extinguishes the right or claim she seeks to have enforced, and it was therefore necessary for her, in making out a case in which the relief sought could be granted, to show some defect in the contract upon which it could be declared void."

Nailli vs. Maurer, 25 Md., pages 538–540.

In a previous case the Court of Appeals of Maryland lays down the following rule:

"This case must be disposed of upon the construction of the ante-nuptial agreement between the appellant and her husband. If she has relinquished her rights to his estate, in virtue of the marriage, she has no claim to the administration of his estate, nor to object to the validity of his will. Something was said at bar as to the inadequacy of the consideration of that agreement, reference being had to the extent and value of the husband's property before marriage. But with such questions we have nothing to do in the present record, so long as the agreement remains in existence."

5 Md. 324, see page 326.

It has also been held by the Court of Appeals of Maryland that the waiver and relinquishment of all rights in an ante-nuptial agreement covers counsel fees, costs and expenses.

"In our opinion, such costs, expenses and counsel fees are not properly chargeable against the estate. By the terms of the ante-nuptial agreement, she had waived and relinquished all rights to any portion of her husband's estate."

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Here are three decisions showing that every right, including all right to counsel fees, costs and expenses of suit, is relinquished by an ante-nuptial agreement.

The language of the Constitution is broad enough to cover all law of a State, whether written or unwritten.

"And due process of law and equal protection of laws are secured if the laws operate on all alike, and do not subject the individual to arbitrary exercise of the power of government."

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Mr. Justice Field, in 100 U. S., referring to section 1 of the 14th amendment, says: "That section is directed against the State. 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' *As the State, in the administration of its government, acts through its executive, legislative and judicial departments, the inhibition applies to them.*"

100 U. S., page 334.

The defendant in error is seeking relief in violation of her ante-nuptial contract, in which she relinquished and abandoned all rights against the plaintiff in error for counsel fees, suit money, alimony and otherwise, and the Court in passing an order in her favor is subjecting the plaintiff in error to the arbitrary exercise of the powers of government through the judicial department, one of the departments of government, which is inhibited by the Constitution, (100 U. S., *ubi supra*,) and is making a law impairing the obligation of the contract.

has expressly relinquished all right to claim any estate or interest in the property of her deceased husband. A contract executed in good faith by parties legally competent, as we have said, sustained by a consideration. Her power to bind herself by such a contract, in equity, must be admitted, and we do not doubt that this contract constitutes an equitable bar to the claim sought to be enforced by this bill. The authorities upon this point are full and conclusive. This is not a case in which the specific performance of the contract is sought by the appellants, as the appellee suggests, but one in which she seeks relief in violation of an agreement, which unimpeached, attaches to and suspends or extinguishes the right or claim she seeks to have enforced, and it was therefore necessary for her, in making out a case in which the relief sought could be granted, to show some defect in the contract upon which it could be declared void."

Nailli vs. Maurer, 25 Md., pages 538–540.

In a previous case the Court of Appeals of Maryland lays down the following rule:

"This case must be disposed of upon the construction of the ante-nuptial agreement between the appellant and her husband. If she has relinquished her rights to his estate, in virtue of the marriage, she has no claim to the administration of his estate, nor to object to the validity of his will. Something was said at bar as to the inadequacy of the consideration of that agreement, reference being had to the extent and value of the husband's property before marriage. But with such questions we have nothing to do in the present record, so long as the agreement remains in existence."

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A State may make or pass a law as well by the act of its judicial as by its legislative departments.

"The United States as such, has no common or unwritten law; and when its Courts are called upon to administer the principles of that law, they are guided by it as it exists in the State where the cause arose."

1 Abbott, U. S. Prac., pages 195-197.
Wheaton vs. Peters, 8 Peters, page 591.
Van Ness vs. Pacard, 2 Peters, page 137.
Cooley, Const. Lim., pages 21-25.

While the decision of a State Court upon the interpretation of its own statute is conclusive, this rule does not apply to the unwritten law of the State. Does not article 1, section 10 of the Constitution inhibit the State from making a law by the action of its judicial department as well as by its legislative department in impairment of the obligation of contract. If a State Court passes an order impairing the obligation of contract, in direct violation of the contract, is not that the law of the case if the order so passed is affirmed by the highest Court that can affirm it. Is not that as valid law as any act as the Legislative department can make? When this Court establishes a rule of law either upon the unwritten law of the State or the Federal Constitution, or statutes or treaties, is not such rule the law, even superior to any legislative act? Law is not made or passed by the legislative department of the State alone.

"A judicial decision is either the recognition or affirmance of a rule of law, or the application of a known rule to a certain state of facts. In either case, it is the promulgation of a law; the former being its simple statement as a rule; the latter indicating its practical scope and obligation."

Robinson, section 7, and authorities cited.

The plaintiff in error specially set up and claimed in his bill of complaint that the Court could not pass any order for the payment of counsel fees or alimony, without said order being in impairment of the obligation of the ante-nuptial con-

tract between the plaintiff in error and the defendant in error, and specially set up and claimed that such impairment is inhibited by article 1st, section 10 of the Constitution of the United States; that the Constitution of the United States is the supreme law of the land; "and the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." In derogation of said right, title, privilege and immunity, the Court passed an order requiring the plaintiff in error to pay money. Said order is a decision against the right, title, privilege and immunity specially set up and claimed by the plaintiff in error under the Constitution of the United States. The Court could not pass such an order without involving and deciding the federal question and the decision, is against the party specially setting up and claiming the right, privilege and immunity under the Constitution and Laws of the United States.

This case is directly within the rule laid down by the most recent decisions of this Court, upon its jurisdiction under section 709 of the Revised Statutes of the United States, in which it is held that the Federal question must be specially set up on the record, and the decision must be against the right, privilege and immunity specially set up and claimed.

Fowler vs. Lamson, et al., 17 Sup. Ct. Rep., page 112.

Chicago & N. W. Ry. Co. vs. City of Chicago, 17 Sup. Ct. Rep., page 129.

The question as to which departments of the State government the inhibition in the Federal Constitution applies, is a question to be argued on the merits of the case rather than on a motion to dismiss for want of jurisdiction; the jurisdiction of the Court is beyond question.

The opinion of the lower Court, filed June 11th, 1895, and the orders of the Court, imposing a payment of money upon the plaintiff in error under the practice of the State, are repugnant to Article 6, section 2, of the Constitution of the United States, under which the plaintiff in error specially set up and claimed a right, privilege and immunity in his origi-

nal bill. Article 6, section 2, of the Constitution, inhibits all the Judges of a State from passing an order in derogation of a title, right, privilege and immunity secured by the Constitution of the United States.

The Constitution and Laws of the United States secure to the citizens of the United States their rights under the unwritten laws of the several States, and Article 6, section 2, inhibits the judges of the several States from making a usage, practice, statute law or custom of the State override the right, title, privilege or immunity secured by the Constitution of the United States. Article 6, section 2 is a direct inhibition on the Courts of the State. The lower Court could not render this decision in this case without deciding this Federal question against the plaintiff in error, and this Court has jurisdiction, and the motion to dismiss ought to be stricken from the files, or in any case ought to be denied.

II.

There is united with the motion to dismiss for want of jurisdiction, a motion to affirm on the ground that the writ of error is frivolous and sued out for the purposes of delay. The objection that the defendant in error has not printed a fair extract of the Record is equally applicable to that motion. But this Court must see that there never was a writ of error prosecuted to this Court, in greater good faith than the writ of error in this case. The plaintiff is denied every right secured to him by the written and the unwritten law of the State, and the Constitution and Laws of the United States, in the State Courts in this case. In direct violation of the Statute of the State, the defendant in error and her attorneys, with the aid of the State Court, caused him to be arrested and incarcerated by the Sheriff for Baltimore city, upon an attachment, and deprived of his liberty, even after the writ of error in this case had been allowed to this Court. Every right, privilege and immunity secured to him by the Constitution and Laws of the United States, has been ridden over rough shod by the lower Court. This Court will not go into the merits of the case on this motion, but the plaintiff in

error will set forth a few of the points in the case to show that the writ of error is not frivolous or sued out for the purposes of delay. The *nisi prius* Court refused to release him from custody, except on condition that he file a supersedeas bond and completed his record to this Court within much less time than that allowed by the Statutes of the United States, and the law as laid down by this Court in a case in which the late Chief Justice of this Court delivered the opinion of the Court.

93 U. S. 86, Mr. Chief Justice Waite.

The Code of Public General Laws of Maryland, article 16, section 168, vol. 1, pages 187-188, provides: "The Court may for the purpose of executing a decree, or to compel the defendant to perform and fullfil the same, issue attachment of contempt, * * *," but where the decree only directs the payment of money, no defendant shall be imprisoned, "that rule must apply equally where the plaintiff is ordered to pay money and the said arrest and imprisonment were illegal, and the plaintiff in error was deprived of his liberty in direct violation of the law of the State and the United States, the case not being before the lower Court, and a writ of error being allowed to this Court at the time the plaintiff in error was taken by the sheriff of Baltimore city and delivered to the Circuit Court for Baltimore County. The said proceeding is the most high-handed outrage ever perpetrated upon a citizen of the United States. The lower Court had no authority of law to pass the order passed on the 26th day of July, 1895; this Court has laid down the rule in the most emphatic terms that an appeal takes the case out of the lower Court. The plaintiff in error had taken an appeal from the previous order of the Court, passed on the 15th day of June, 1895, and said appeal is authorized by article 25, section 25 of the Public General Laws of the State, Vol. 1, page 25: "An appeal may also be allowed in the following cases, to wit: From any order granting an injunction or from a refusal to dissolve the same, or an order appointing a receiver * * * from an order for the sale, conveyance, or delivery of real or personal

property, or the payment of money." Under the practice of Maryland no allowance by the Court is necessary for an appeal. Article 5, section 1, provides: "An appeal may be taken from a Court of law or equity by application to the clerk, * * * or by filing a petition with the clerk of the court to which the appeal is made; and upon such application, if made within the time prescribed by law for taking such appeal, the clerk * * * shall enter a prayer of appeal upon his docket or minutes of the proceedings, and transmit the papers or a transcript of the record, as hereafter required."

The plaintiff in error has the absolue right under the law to take the appeal taken upon the 15th day of June, 1895, and the lower Court had no right whatever, to pass any order in the case pending that appeal. The rule is laid down by Mr. Justice Jackson of this Court, that an appeal, even if improvidently taken removes the case from the lower Court; and the appellant in error contends, that when the subsequent order was passed by the *nisi prius* Court, at a time when the case was out of that Court, that said order is not due process of law. "No new proceedings having been had in this Court, between the mandate of the Supreme Court and the decree based thereon, said appeal by defendants, was no doubt improvidently taken and allowed. Still it has the effect of transferring the cause, and the decree sought to be reviewed, into the Supreme Court, where it will remain until heard and disposed of on the merits, or dismissed under the provisions of the ninth rule of said Court, for appellant's failure to file the record and docket the case. * * * While said appeal is pending in the Supreme Court, whether there rightfully or improvidently, this Court clearly has no authority or jurisdiction to entertain a bill of review to impeach said decree."

40 Fed. Rep. 550-551, Mr. Justice Jackson.

This Court has laid down the rule that an appeal removes the case from the lower Court: "The appeal to this Court was perfected by the filing of a bond for costs in January, 1874, and although this Court in December, 1875, dismissed the appeal for the failure of the appellants to file and

docket the cause in this Court, yet the cause was out of the Court below. * * * While the appeal was pending here, although there was no supersedeas, the Circuit Court had no jurisdiction to vacate the decree, in pursuance of the prayer of a bill of review, because such relief was beyond its control."

Ensminger vs. Powers, 108 U. S. 302-303.

"The overwhelming weight of authority is that an appeal, properly perfected, removes a case wholly and absolutely from the trial Court, and places it in the highest tribunal. It is difficult to conceive how it could be otherwise, since it is not possible that two Courts can have authority over a single case at the same time."

Elliott's Appellate Procedure, section 541.

"The term appeal is used to designate the act of lodging the action in the appellate Court."

Williamson vs. Middlesex, C. P. 42 N. J. L. 391.

"An appeal or writ of error transfers jurisdiction from the lower to the appellate Court, and deprives the former during the pendency of the appeal, of all power of proceeding further in the matter involved in the appeal."

Courts and their Jurisdiction, by John D. Works, page 150, and cases cited.

Keyser vs. Tarr, 105 U. S. 265.

The appeal taken on the 15th day of June, 1895, having deprived the *nisi prius* Court of all jurisdiction, the order passed on the 26th day of July, A. D. 1895, is not due process of law and is against the right, privilege, title and immunity specially set up and claimed on the record by the plaintiff in error, under the Constitution and Laws of the United States. Upon the further argument of this case upon its merits, the plaintiff in error will more fully show why an order passed in a Court that has neither jurisdiction of the parties or the subject matter, at the time said order is passed, and at a time when the

case is not in said Court, is not due process of law, if the Court requires any further argument on that point. The plaintiff in error excepted to the said order on the specific ground that the said order is passed *ultra vires*, is not due process of law, and is repugnant to the 14th Amendment of the Constitution of the United States, having previovsly set that instrument up in three separate pleadings on the record. Can it be contended, that this Court has not jurisdiction to determine that question? Or that a writ of error is frivolous or taken for delay when the validity of an order requiring the plaintiff to pay nineteen hundred dollars is brought here for review, and for a reversal of the illegal order?

Law in its regular course of administration through Courts of justice is due process, "but the passage of the order in this case on the 26th day of July, 1895, pending the appeal from the previous order and judicial opinion is not" regular course of administration. How can there be "regular course of administration" when the case was absolutely out of the Court that passed the order? In the appeal taken on the 15th of June, 1895, the plaintiff in error appealed not only from the order of the Court for the payment of money, but also from the decree of the Court passed on June 11th, 1895. The Court of Appeals of Maryland has decided that a judicial opinion of a Court of Equity is synonymous with its decree, and an appeal will lie from *a judicial opinion*. The very cases the Court cites in its opinion in the case at bar, make a distinction between mere opinion and *judicial opinion*, and hold while there is no appeal from an opinion which is not judicial, that is an opinion stating something the Chancellor intends doing in future, that when the opinion is directly on the point raised and the Chancellor then acts by his opinion, it is synonymous with a decree, and an appeal will lie from such an opinion of the Court. The opinion delivered in the case at bar on the 11th day of June, 1895, is certainly a judicial opinion, and is synonyomous with a decree.

"The impress of the Chancellor's 'judicial opinion,' in the sense which the Court have used it, being synonymous with what he has adjudged and decreed."

Hagthorp vs. Hook, 1 Gill & Johnson, 129, see page 311.
Phillips vs. Pearson, 27 Md. 242, see page 255.

An appeal may be prosecuted from any order of a Court of Equity that determines a right between the parties.
56 Md. 571.

"In fact, so far as the weight of precedent and practice goes, it is clearly in favor of the construction we have placed upon the Statute, and sustains the right to appeal from such orders."
57 Md. 465, see page 475.

"The appeal suspends the execution of the decree. This is not a case where security is to be given in order to supersede the execution."
1 Wall. 410, Mr. Justice Nelson.

"But the Appellate Court is empowered and is bound to inquire into the jurisdiction of the lower Court."
Amer. & Eng. Ency. of Law, Vol. 12, pages 306 307.

In the recent case decided by this Court, it is held that where the act of a State Court affects the validity or negotiability of property held under a contract, the Federal Constitution is violated, and this act of the Courts of the State of Maryland, in keeping these illegal orders hanging over the plaintiff in error, affects the negotiability or sale of his property in the State and impairs and lessens its value.

"If, by this adjudication, a right possessed by the plaintiff in error as holder of the bonds, under the Constitution of the United States was necessarily denied, then this Court has jurisdiction to revise the judgment on writ of error."
Woodruff vs. Mississippi, 162 U. S. 291, see page 298 (Mr. Chief Justice Fuller).

By the adjudication of the Court of Appeals in dismissing the appeal in this case, without revising the order passed on the 26th day of July, 1895, the validity of the title and the negotiability of the property of the plaintiff in error is as much affected as the validity and negotiability of the bonds in Woodruff's Case were affected or impaired, and the plaintiff in error has the same rights to his property as the holders of those bonds had to the bonds, and is entitled just as much as said bondholders to have the value of his property unimpaired. The orders in the case at bar deny the right possessed by this plaintiff in error to his property, under the ante-nuptial contract, as fully as the adjudication in that case, in which the Court sustained a demurrer, and dismissed the complainant's bill, denied a right of the holders of said bonds, and the decree of the Court of Appeals in the case at bar dismissing the appeals, is violative of the laws and Constitution of the United States, because, under the ante-nuptial contract the plaintiff in error is entitled to have his property free and unincumbered, and its value unimpaired.

"And any acts by State authority impairing or lessening the validity or negotiability of obligations thus made payable in gold coin, are violative of the laws and Constitution of the United States."

162 U. S. 307, separate opinion of Mr. Justice Field.

"The impairing or lessening" the value of the property, namely, the bonds, constitutes the violation of the Constitution of the United States in that case, the only difference in the cases is in the nature of the property, and that impairment was done by the act of a Court. Is the same rule not applicable to the property of the plaintiff in error when its value is impaired or lessened by an act of a State Court?

The attorneys for the defendant in error in their brief filed upon the motion to affirm say: "But it is respectfully submitted that there is no constitutional inhibition against State Courts misconstruing contracts, disregarding them, or even abrogating them altogether." They do not cite any authority

for that proposition. This Court has laid down the rule diametrically the other way. The decision of this Court in Woodruff vs. Mississippi, *ubi supra*, is based on the ground that the Supreme Court of Mississippi misconstrued the contract.

"Without pursuing the subject further it is enough that by their terms these bonds were generally payable in money of the United States, and this being so, the conclusion of the Supreme Court of Mississippi that they were otherwise payable was erroneous."

162 U. S. p. 303.

"As the case was determined by the State Supreme Court on the single ground to which we have referred, we shall not discuss the validity and effect of the subsequent legislation brought under review by the bill, or any of the other questions suggested by counsel."

Idem, p. 304, Mr. Chief Justice Fuller.

By the amendment of the Constitution of the United States certain rights are reserved "to the people," and the Constitution protects the reserved rights thereunder as fully as it does the powers delegated. They are all within the provisions and under the Constitution. A State Court has no right to take the property of one man and give it to another contrary to eslished law. Such an act would subject the individual to the arbitrary exercise of the power of government, which this Court has held is inhibited by the Constitution of the United States. The orders passed by the lower Court are nothing less than this, and the case of Woodrufl vs. Miss., *ubi supra*, shows that this Court has jurisdiction, and the inhibition in the Constitution of the United States against the State applies to all the departments of State, the judicial as well as the legislative, and that any order or decision of a State Court which involves the right to enforce a contract according to the meaning thereof, as determined by the Constitution and laws of the United States, interpreted by the tribunal of last resort, raises a question of Federal right, which justifies the issue of the writ of error, and gives this Court jurisdiction under it. The ante-nuptial contract in the case at bar, by its express

language, releases the plaintiff in error from all liability for the payment of money. And the rule has been too well settled by this Court that no Court has the right, by its mere edict, to alter the contract that the parties have made, or to abrogate it. Suppose A would enter into a written contract to purchose a house from B for fifty thousand dollars, and upon his refusal to carry out the contract, that a bill was filed for specific performance, would a Court have the right to say the contract must be carried out, except in this, we think the property worth a hundred thousand dollars, and therefore A must pay a hundred thousand dollars for it, or we think it worth only twenty-five thousand dollars, and only that amount will be required? Courts cannot make contracts for parties. It can only enforce those the parties make. Neither can Courts alter contracts. If the express language of the contract creates a title, right, privilege or immunity of a citizen of the United States, no Court can by its arbitrary action take it away. The very object of the 14th Amendment when originally adopted was to prevent State Courts and Legislatures, but especially the Courts, from abridging the rights, privileges and immunities of the colored race.

Stauder vs. Virginia, 100 U. S. 303.
Virginia vs. Rives, 100 U. S. 313.

The Act of Congress, March 1st, 1875, found in section 1878, Revised Statutes, provides:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts."

And this law of the United States protects the plaintiff in error in the enforcement of his ante-nuptial contract; and the Constitution prohibits the Courts of the State from denying his rights under said contract.

"A right or an immunity, whether created by the Constitution or only guaranteed by it, even without any express delegation of power, may be protected by Congress."

Prigg vs. The Com. of Penn. 16 Peters, 539.
100 U. S. 303, see page 310.

"It is doubtless true that a State may act through different agencies, either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be by action of one of these agencies or another. Congress, by virtue of the 5th section of the 14th Amendment, may enforce the prohibitions whenever they are disregarded by either the legislative, the executive, or the judicial departments of the State."

Virginia vs. Rives, 100 U. S. 313, see page 318, Mr. Justice Strong.

"Denials of equal rights in the action of the judicial tribunals of the State are left to the revisory powers of this Court."

Idem p. 322.

The right to enforce contracts in every State and territory being protected by the Act of Congress, no State Court can abrogate, alter or impair a contract.

The order passed by the lower Court on the 26th day of July, 1895, should be reversed, because the Court had no authority to pass it for want of jurisdiction, and because the same is passed *ultra vires* and not in the regular administration of justice, the case being out of the Court at the time, and also because it is in impairment of the contract, and the bill should be allowed to stand dismissed upon the application of the plaintiff to dismiss, which was made before any cross-bill or answer incorporating a cross-bill was filed, and the plaintiff in error should not be obliged to pay counsel fees in impairment of his contract. The counsel fees and suit money provided for in the illegal order passed July 26th, 1895, with the accrued alimony would now amount to nearly four thousand dollars. It can hardly be said that this is a frivolous writ of error which brings this question to this Court for review. The motion to affirm should be denied, and when the case is reached in the regular call of the docket on its merits, the bill of the complaint and all proceedings had thereon should be allowed to stand dismissed. It is against the policy of the law to com-

pel a party to prosecute a suit for nullity of marriage or divorce when he desires to dismiss it.

The plaintiff in error has ordered the bill of complaint and exhibit to be printed, so the Court may see more clearly the nature of the suit, and the false statement of the defendant in error, as to when the Federal question was first raised.

In the recent divorce case, in which this Court reversed the Supreme Court of New York, which was brought to this Court upon the ground that the decision of the Supreme Court of New York was repugnant to Article IV, of the Constitution of the United States, this Court said: "The plaintiff duly excepted to the findings and conclusions, and it is well settled that exceptions to alleged findings of facts, because unsupported by evidence, present questions of law reviewable by a Court of Error."

Laing vs. Rigney, 160 U. S. 531, see page 540, Mr. Justice Shiras.

In the case at bar, the plaintiff in error, in his answer to the defendant's petition for alimony and counsel fees, says: "And he denies that he has an income of $12,000 a year, or that he is amply able to provide for her or pay her $5.000 a year, *or pay her anything whatever*, and denies all liability on his part for payment of any such suppor.t" Without any evidence whatever or without even pretending to find any facts, the lower Court passed its order. The plaintiff in error duly excepted to the order, and under the rule laid down by this Court in 160 U. S. 531, *ubi supra*, the exceptions raised questions of law reviewable by a Court of Error. The rule of law, as laid down in Chitty's Gen. Practice, is that, even where a woman is entitled to alimony, it is in proportion to the income of the husband, and this rule of English law is the law of the State of Maryland in cases where alimony is not barred by contract. No matter how much the husband might be worth, if it is vacant property from which no income accrues, the alimony is not affected by it, the husband is never required to sacrifice his principal to pay alimony. The lower Court passed the orders without any knowledge

whatever as to the plaintiff in error's pecuniary condition or circumstances, and without any finding of facts. The defendant in error in filing her petition for alimony is in the nature of a plaintiff, and article 35, section 3 of the Code Public General Laws of Maryland, prohibits the Court from acting upon the testimony of the plaintiff alone; there was no inquiry whatever into the financial status of the plaintiff [redacted] error by the lower Court. This is not an ordinary s[redacted] for divorce but a suit for nullity, there is no provis[redacted] in the laws of the State for a decree of nullity, but article 16, section 36 Code Public General Laws, Maryland, provides that a decree *a vinculo matrimonii* shall be rendered "for any cause, which, by the laws of the State, render a marriage null and void *ab initio.*" Therefore the plaintiff prayed such a decree as well as a decree of nullity. Neither did the plaintiff in error file a bill for divorce in the Circuit Court for the District of Massachusetts. He filed a bill there to restrain the defendant in error and her brother from conspiring with David Stewart et al. to interfere with the liberty of the plaintiff in error; the said David Stewart have constituted himself a private detective, and employed other detectives to follow the plaintiff in error about to try to find some evidence upon which to base a divorce suit, and in the said bill the plaintiff in error incidently raised the question of the validity of the marriage and pleaded the ante-nuptial contract, Courts of the United States have jurisdiction to incidently inquire into the validity of marriage. This rule was laid down in the celebrated Myra Clark Gaines case, in which the title to the property depended upon the validity of the marriage, and this Court determined the question of the validity. The lower Court has no jurisdiction to proceed further in this case, because in a suit of this character the parties must be domiciled in the State at the time the decree is rendered as well as the time the bill is filed, which is a question to be argued when the case is heard on its merits. The plaintiff in error had a right to dismiss his bill at the time he made the application, no cross bill, or answer incorporating a cross bill, having then been filed, the

most recent case is that of Nat C. Goodwin, who filed a bill in San Francisco for divorce, and then applied to dismiss it; his wife had filed a cross-bill, but it appearing that he made his application to dismiss before the cross-bill was filed the Court allowed him to dismiss his bill.

This is the universal rule laid down by all the authorities that a plaintiff may dismiss his bill before a cross-bill or an answer incorporating a cross-bill, is filed.

U.S. Cir. and Cir. Ct. dist. Mass. ha. Jurisdiction 112 U.S.

THOMAS C. CHAPPELL,

Plaintiff in Error and Solicitor in Person.

165-720

165-720

Supreme Court of the United States.

OCTOBER TERM, 1896.

No. 478.

THOMAS C. CHAPPELL, PLAINTIFF IN ERROR,

vs.

MARY BALL CHAPPELL.

PETITION FOR REHEARING.

THOMAS C. CHAPPELL,
Plaintiff in Error and Solicitor in Person.

(16,240)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

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vs.

MARY BALL CHAPPELL, DEFENDANT IN ERROR.

PETITION FOR A REHEARING.

To the Honorable the Chief Justice and the Associate Justices of said Court:

The plaintiff in error moves this honorable Court for a re-argument of this case upon the question of jurisdiction.

As no opinion has been filed in the case, and as the plaintiff in error specially set up and claimed in his original bill of complaint and his subsequent pleadings on the record a right, privilege, title, and immunity under article 1, section 10, article 6, section 2, the fourteenth amendment of the Constitution of the United States, and the Constitution and laws of the United States generally, and as the decision is against the right, title, privilege, and immunity specially set up and claimed, the plaintiff in error presumes that the

writ of error is dismissed for want of jurisdiction, under the rule laid down in *McComb vs. Commissioners of Knox County*, 91 U. S., 1; *Boswick vs. Brinkhoff*, 100 U. S., 3, and *Gibbons vs. Ogden*, 6 Wheaton, 448; and in Foster's Federal Practice, volume 11, page 1002, as follows: "A judgment which orders a new trial or further proceedings cannot be thus reviewed," viz., by writ of error in the Supreme Court of the United States from a State court. But in the case at bar the plaintiff in error respectfully submits that the action of the court of appeals of Maryland in ordering further proceedings is a denial of the equal protection of the laws, and the decision is against the title, right, privilege, and immunity specially set up and claimed under the Constitution and laws of the United States. The record shows that at the time the circuit court of Baltimore county decreed alimony neither party was domiciled in the State of Maryland. The plaintiff in error excepted to the said decree for want of jurisdiction, and specially set up and claimed in the said exception a right, privilege, and immunity under the Constitution of the United States.

The court of appeals of Maryland has itself decided that in such a case the courts of the State have no jurisdiction to decree alimony, and the court of appeals was bound to pass upon that question and to decide it according to established law.

In the case of *Keerl vs. Keerl*, 34 Md., 21, the said court decides that question point blank:

"Alimony is defined to be 'a maintenance afforded to the wife where her husband refuses to give it, or where from his improper conduct she is compelled to separate from him.' (2 *Bishop on Mar. & Div., Sec.* 351, *note* 1; *Wallingsford vs. Wallingsford*, 6 H. & J., 488.) It is an incident of the marriage, and is a right entirely depending upon the status of the parties, and each State has the right to determine the status and condition of those who are domiciled within its limits.

"The courts of this State have therefore no jurisdiction to

pass upon and determine the relative duties of a husband and wife both of whom are residents of another State, and the legislature never intended to confer such power by the passage of the act of 1777, nor the adoption of the code.

"To give jurisdiction to our courts in such cases, one or the other of the parties must be domiciled within the State.

"It was contended that the court below had jurisdiction in this case because the husband, Henry Keerl, had property within its jurisdiction.

"To adopt such a doctrine would result in great confusion, vexation, and perhaps injustice, for the wife might then institute a proceeding for alimony in every State where her husband might have property, and have it decreed to her in each State, and that, too, as was very forcibly said by the learned judge who decided this case below, when 'the court within whose jurisdiction the parties are domiciled may, perhaps, have decreed a restitution of conjugal rights.'"

Keerl vs. Keerl, 34 Md., 21; see pp. 25, 26.

What right has the court of appeals to order further proceedings in a case where it is apparent from the record that the lower court has no jurisdiction to proceed, neither party being domiciled in the State of Maryland?

One of the Federal questions presented to this Court on this record is the identical Federal question presented in the case of *Laing vs. Rigney*, 160 U. S., 531, which was a case for divorce, the question being whether the lower court has jurisdiction to make such a decree as will be entitled to "full faith and credit in the State where the parties are domiciled, in accordance with the provisions of article 4 of the Constitution of the United States." This Court held in that case that the proper mode of raising that question was by appeal or writ of error. How does the court of appeals know whether or not in the case at bar the court within whose jurisdiction the parties to this suit are domiciled has not decreed a restitution of conjugal rights?

The circuit court for Baltimore county, under the rule laid down by the court of appeals of Maryland in the case of *Keerl vs. Keerl, ubi supra*, had no jurisdiction or authority

of law to decree the alimony or counsel fees or suit-money on the 26th day of July, 1895. The record shows that neither party was domiciled in the State at that time.

In the case of *Thompson vs. McKim* the court of appeals of Maryland held that an appeal lies from an order to pay money into court. (See opinion of the court, 6 H. & J., pp. 327–335—Buchanan, C. J.) The rule is universal that no State has a right to exercise jurisdiction in matters of divorce or nullity of marriage where the parties are not domiciled in the State at the time the decree is made.

The counsel for the defendant in error is the author of a work on marriage and divorce, although he does not seem to know its contents. "Oh, that mine enemy would write a book!" Here is an extract from section 217 of his book:

"But no State has a right to push its domestic policy beyond its boundaries and into other States, or to dissolve the marriage or change the domestic status of persons belonging to other States, and though the United States Constitution requires every State to give full faith and credit to the judicial proceedings of every other State, a divorce granted by one State need not be held valid in another, except so far as it concerns parties and things within the former State's control."

The law of marriage and divorce will be in a state of limitless confusion if a party is held to be divorced in one State and held to be married in another. Here is another extract from his book:

"On the other hand, if neither party is domiciled in the State the marriage cannot be dissolved, even though the parties voluntarily appear. The consent of the State which controls their status is necessary." (Sec. 217.)

SEC. 218: "Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State, and Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved and the effect thereof. 'And the records and judicial proceedings, authenticated as aforesaid,

shall have such faith and credit given them in every court within the United States as they have by law or usage in the courts of the State from which the said records are or shall be taken.' This cannot mean, on the one hand, that any divorce one State chooses to grant must be held valid in all other States, for every State has the undoubted right to determine for itself the status or domestic and social condition of the persons domiciled within its territory. * * * As a general thing, these provisions are said to apply to divorces granted by courts which have jurisdiction over the parties and the subject-matter. * * * Thus, if both parties are domiciled out of the State where the divorce is granted, such State, having no control of their status, has no right to dissolve it, and other States are not bound to recognize the validity of the divorce, though there was full jurisdiction over the parties by the defendant's voluntary appearance. When only one of the parties is domiciled in such State, every State must hold the divorce valid as to the domiciled party, but not as to the other. * * * Jurisdiction to dissolve the marriage of a party may thus be said to depend upon the domicile of such party."

Stewart, Marriage and Divorce and cases cited.

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The Federal question whether the court of Maryland can make such a decree as will be entitled to faith and credit in any other State is raised upon the record in this case. The court of appeals has no authority of law to order the lower court to proceed further to make a decree which will be repugnant to article 4 of the Constitution of the United States.

The question of the right of the circuit court of Baltimore county to pass its order or decree for alimony, counsel fees, and suit-money on the 26th day of July, 1895, and to proceed further is raised on the record by the exceptions filed in that court to its said decree or order. In the case of *Keerl vs. Keerl*, 34 Md., *ubi supra*, the court of appeals of Maryland styles an order for alimony a decree, and it is a decree.

The plaintiff in error therefore contends that the court of appeals by ordering further proceedings repugnant to the fourth article of the Constitution of .the United States, and

against the right, privilege, and immunity specially set up and claimed thereunder, this Court cannot be deprived of jurisdiction of this writ of error at this time in this case; that, on the contrary, this Court, sitting as a court of equity, whose province is "to do right and prevent wrong," has full power now to prevent the State court from proceeding to a decree which will not be entitled to full faith and credit in other States, and which will be repugnant to article IV of the Constitution of the United States.

In addition to the Federal question of impairing the antenuptial deed of release and contract, the identical Federal question raised in *Laing vs. Rigney* is presented on this record. This Court said in that case, which was a case for divorce:

"It is undoubtedly true, as contended by the defendant in error, that if the judgment of the court of New Jersey was not binding upon the defendant therein personally in that State, no such force could be given to it in the State of New York."

160 U. S., 531; see p. 540; Mr. Justice Shiras.

"Service within the State was found to be, under the law and practice of New Jersey, an indispensable prerequisite to the rendition of a personal judgment."

Rigney vs. Rigney, 127 New York, 408, 415; 160 U. S., 540.

Then this Court in that case went on to determine whether the court of chancery had jurisdiction to make the decree for alimony in the case in the State of New Jersey, and it determined in that case that the court of chancery did have jurisdiction to make said decree, because the parties were residents and because the defendant had voluntarily appeared to the supplemental bill, or that his acts amounted to a voluntary appearance.

The case at bar presents the exact, same question, viz., the jurisdiction of the circuit court for Baltimore county to de-

cree alimony, counsel fees, and suit-money when neither party was a resident or domiciled in the State of Maryland, and when there was no personal service of the final order or decree for said alimony, counsel fees, or suit-money, and when the plaintiff in error did not voluntarily appear generally, but, on the contrary, appeared *gratis*, specially for the purpose of excepting to the said order of the court for want of jurisdiction.

In order to determine whether a decree of the court of Maryland in this case is entitled to full faith and credit in other States, this Court must determine upon the validity of the decree of the court of the State of Maryland in this case, and in order to determine the validity of the said decree it must determine the jurisdiction, and the question of jurisdiction on this point of the non-residence of the parties is as fully before this Court on this record as it can be upon any future record.

The order for the payment of alimony on this record is a decree rendered in a court which the record shows had no jurisdiction. All further proceedings of the State court will be without jurisdiction. When that fact is apparent from this record, why should this Court not now reverse the order of the lower court? To allow the lower court to proceed further in a case in which it absolutely has no jurisdiction, and in which it cannot render a decree which will be entitled to full faith and credit in every other State, is merely unnecessarily postponing the decision of the question to some future time, like permitting the man to be executed first and to appeal afterwards, whose attorney said to him, "*Let them hang you and I will make them suffer for it!*"

This decree for alimony and the jurisdiction of the court to pass it is fully before this Court on this record, as is also the jurisdiction of the lower court to proceed further, and the jurisdiction of the court of appeals of Maryland to order further proceedings in this case. If the courts of Maryland have no authority to make a decree herein which will not

be entitled to full faith and credit in every other State, then the State court should be prevented from so proceeding. It is the province of a court of equity *to prevent wrong*, and the cases cited in the beginning of this motion in which further proceedings were ordered are cases at law and not in equity. A court of equity is a court of conscience.

Daniel's Chan. Prac., 357, note.

In order to determine whether the judgment of the New York courts in dismissing the plaintiff's complaint, seeking to enforce a decree for alimony, in the case of *Laing vs. Rigney*, was justifiable, this Court had to determine whether the plaintiff's complaint in that case was based upon a decree of the court of New Jersey having any validity. The validity of the decree and the jurisdiction of the court of chancery of New Jersey was the test applied.

If this Court can determine the jurisdiction of the court of chancery in that case, why can it not do so in this case at bar? And if this Court sees from this record that the courts of Maryland have no jurisdiction to make the decree for alimony, counsel fees, and suit-money herein, and no jurisdiction to proceed further herein, why should it not, acting as a court of equity, *prevent the wrong of allowing said decree to stand, and prevent the further wrong of allowing the State courts to proceed further?*

"The Federal question presented by this record is whether the judgment of the New York courts in dismissing the plaintiff's complaint, which sought to enforce a final decree of the court of chancery of New Jersey, gave due effect to the provisions of article IV of the Constitution of the United States, which require that full faith and credit be given in each State to the judicial proceedings of every other State." (160 U. S., 531; see p. 539.)

The question raised on this record at bar, that the State courts have no jurisdiction to pass a decree which is entitled to full faith and credit, is exactly the same Federal ques-

tion. As the decision in *Laing vs. Rigney* shows that the foundation of the decision depends upon the jurisdiction of the court making the decree, and the question of jurisdiction of the State court to make a decree for alimony, counsel fees, or suit-money, or any further decree in the case can be as fully determined by this Court upon this record as upon any subsequent record, why should this Court not pass upon that question upon this writ of error, the case being in this Court and it being manifest that the State courts have no jurisdiction because of the non-residence of the parties? In *Laing vs. Rigney, ubi supra*, this Court held that the proper mode of raising the question of the jurisdiction of the State court is by appeal and not collateral attack.

Wherefore the plaintiff in error prays a rehearing.

THOMAS C. CHAPPELL,
Plaintiff in Error and Solicitor in Person.

The undersigned, counsel for the plaintiff in error in the above-entitled case, does hereby respectfully certify that, after a careful consideration of the questions of fact and law involved and of the ground on which this petition is made, he believes this to be a proper case to be reheard, touching the matters and questions stated in the above petition, and that the grounds assigned in such petition for rehearing are meritorious and well founded, and that the case of *Keerl vs. Keerl*, 34 Md., 21, was not called to the attention of the court of appeals of Maryland or to the attention of this Court heretofore, and that he believes it is inequitable and against conscience that the plaintiff in error in the above-entitled case should be harassed by a decree made by a court which has no jurisdiction and which is not entitled to full faith and credit in other States, and which is repugnant to article IV of the Constitution of the United States.

THOMAS C. CHAPPELL,
Counsel for Plaintiff in Error.